STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

- -

The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown
& Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

- -

DEPOSITION OF F. ROSS JOHNSON

Volume I, Pages 1 - 204

http://legacy.library.ucsf.edu/tid/jqm05a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

(The following is the Deposition of F. ROSS JOHNSON, taken pursuant to Notice of Taking Deposition, by videotape, at the offices of Womble Carlyle Sandridge & Rice, Attorneys at Law, 1275 Peachtree Street N.E., Suite 700, Atlanta, Georgia, on September 11, 1997, commencing at approximately 9:18 o'clock a.m.)

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E X A M I N A T I O N I N D E X

WITNESS	EXAMINED BY	PAGE
H. Ross Johnson	Mr. Finzen	8

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E X H I B I T I N D E X

EXHIBIT (Plaintiffs')	DESCRIPTION	PAGE
1600	Second Amended Notice of Taking Deposition, F. Ross Johnson, 3 pgs.	7
1601	Article from Westlaw, "Who's News," Wall Street Journal, 10/6/94, 4 pgs.	46
1602	Article from Lexis-Nexis, "The biggest deal in history didn't sink F. Ross Johnson," Toronto Star, 10/24/93, 5 pgs.	47
1603	Transcript, F. Ross Johnson Interview with John Helyar of the Wall Street Journal, 8/1/88, 50689 6668 to 6699	50
1604	Memo, D. N. Iauco to R. A. Kampe, 5/9/88, 50638 7706 to 7707	59
1605	Executive Summary, 50855 5904 to 5908	145
602A	Amended Expert Analysis by Paul J. Much, 7/97, bound volume, no Bates numbers, 99 pgs. (REPORTER'S NOTE: 602A should not be given to the witness or his counsel.)	171

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602B	Excerpt, redacted, from 602A, containing only R.J. Reynolds information, 21 pgs.	174
1606	Table, "Advertising and Youth Prevention Expenditures," 1 pg.	190

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P R O C E E D I N G S

(Plaintiffs' Exhibit 1600 marked for identification.)

(Witness sworn.)

MR. FINZEN: Before we begin, we should state on the record that it's my understanding, Mr. Branch, that you and Mr. Johnson have not signed the Minnesota confidentiality order with regard to documents?

MR. BRANCH: We've not signed an order. That's correct.

MR. FINZEN: And it's my understanding that the position of RJR is that they have no objection to proceeding with the deposition in spite of the confidentiality order not being signed with regard to RJR documents used in this proceeding?

MS. McDOLE: That's correct, with the further understanding that the deposition itself would be kept confidential as it would otherwise under the confidentiality order, and I understand that Mr. Branch would agree that the deposition and any exhibits relating to the deposition would not be distributed to third parties.

MR. BRANCH: Mr. Johnson does not intend to publish this on the Internet or otherwise distribute

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it abroad.

MR. FINZEN: All right. With that understanding, can we proceed?

MR. BRANCH: Yeah.

MR. FINZEN: Other counsel, at least with respect to RJR, join in that stipulation?

MR. LAYDEN: That's fine. With respect to the Philip Morris documents, as I've indicated off the record, we'll deal with that issue if and when it arises and hopefully I can get a resolution on that before then.

MS. KELLY: We would also join in that understanding on behalf of Lorillard, but I would also state that that's based on an explanation that the documents you're aware of do not involve Lorillard specifically, and are industry documents.

MR. FINZEN: All right.

F. ROSS JOHNSON,

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. FINZEN:

Q. Good morning, Mr. Johnson.

A. Good morning.

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MR. BRANCH: Excuse me one minute, Mr. Finzen. I'm not receiving anything on my screen here.

THE REPORTER: Let's go off the record.

(Discussion off the record.)

MS. McDOLE: My understanding is as well that Mr. Ferguson, representing the state of Washington, has also signed our confidentiality agreement in the Minnesota case.

MR. FERGUSON: Not quite. Washington initially signed an order which incorporated most of the Minnesota terms into the Washington action, with the exception of the Minnesota court jurisdiction, and a Washington protective order comparable to the Minnesota protective order was subsequently entered.

(Interruption by the reporter.)

MS. McDOLE: Do you have a copy of that?

MR. FERGUSON: I do. It's right here.

(Interruption by the reporter.)

MS. McDOLE: And you would agree that any documents used in this deposition would be treated confidentially subject to your protective order?

MR. FERGUSON: Yes, we do agree.

BY MR. FINZEN:

Q. Mr. Johnson, I'm one of the counsel for the

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state of Minnesota in an action brought by the state of Minnesota and Blue Cross Blue Shield against R.J. Reynolds and other tobacco defendants venued in Ramsey County District Court in the state of Minnesota and we're here this morning to take your deposition in that action. Is that your understanding?

A. It is.

Q. Let me show you, sir, what's been marked as Plaintiffs' Exhibit 1600, which is the second amended notice of taking of your deposition in this case.

Have you seen that document before?

A. I guess I have.

Q. I don't know whether you have or not.

A. I don't know.

MR. BRANCH: I think I've sent you a copy of it, but whether it got to you or not, I don't know.

Q. And Mr. Johnson you're --

A. I assume I may have seen it, but I did --

Q. And you're testifying here today under subpoena; is that correct?

THE WITNESS: Is that correct?

MR. BRANCH: That's correct.

THE WITNESS: Thank you.

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Q. Would you please state your full name and address for the record?
A. Frederick Ross Johnson at [DELETED] [DELETED].
Q. Mr. Johnson, what was your last date of employment with RJR Nabisco?
A. February 10th, I believe, approximately, 1989.
Q. And your title at the time you left the company was chief executive officer?
A. President and chief executive officer.
Q. When you left the company, what were the terms of the severance package when you departed?
A. I had a contract with the company and it just followed the contract.
Q. And what were the terms of that contract?
A. I think you'd have to -- It was all kinds of dimensions to it so I -- I couldn't give you all the specific terms.
Q. Can you tell me what it -- what it is about it that you do recall? What the terms that you do recall are?
A. The -- The basic was a -- a three-year severance, and then I -- and then I took normal retirement.
Q. And in terms of the -- the three-year severance,

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was that a severance package that provided for your regular compensation while you were the president and CEO?

A. Yeah, basically it was the -- my last year's compensation times three years.

Q. What was your last year's compensation?

A. I think it was approximately a million eight.

Q. And that was --

Were there bonuses in addition to that?

A. That included everything.

Q. I'm sorry? That --

A. Everything.

Q. That included everything?

A. (Nodding.)

Q. Including stock options?

A. Didn't have any stock options.

Q. Were there any deferred compensation arrangements?

A. No.

Q. And the normal retirement that you mentioned, that was pursuant to a company pension plan that was in place at the time --

A. Umm-hmm.

Q. -- you left?

What were the terms of the retirement plan; what

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did it provide?

A. I think it worked out at a -- I guess you'd have to take approximate --

Q. I understand --

A. -- without going back in time. It came out to about 50 percent, I believe, of my last five years' work, but it's the basic pension plan that applied to everybody.

Q. Any other provisions of your severance package that you haven't mentioned?

A. The only thing that they did, which was traditional, is they provided office services and a secretary.

Q. Any office space as well?

A. Yes.

Q. So a secretary and office --

A. Yeah, office services and space.

Q. And where was that?

A. In Atlanta.

Q. At the RJR building or in a separate location?

A. Separate building.

Q. And how long a period of time did the office services provision --

A. They -- It normally is a -- It's reviewed each year in terms of, you know, things that they have to

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call for me on and that.
Q. And has that continued to date?
A. Umm-hmm.
THE REPORTER: Your answer, please?
THE WITNESS: Yes.
Q. And is there a duration for the provision of the office services, or is that for life?
A. They review those every year.
Q. As part of the severance package, however, is there a time limit?
A. It wasn't part of the severance package, it was just a separate verbal agreement, really, there's no --
Q. No written?
A. -- written agreement.
Q. And who reviews that?
A. RJR.
Q. Is that done by the board?
A. I have no idea.
(Interruption by the reporter.)
(Discussion off the stenographic record.)
Q. Have you now described everything that is part of the severance arrangement that you had with RJR?
A. Yeah, the first was the severance, the second was a continuing relationship.

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Q. And with respect to that continuing relationship you mentioned the office services. Is there any other aspect of a continuing relationship with RJR Nabisco?

A. No.

I guess just, for instance, they would be paying legal fees for these exercises, which are company related.

Q. Is that something that is addressed as part of the severance agreement?

A. No.

Q. Is that sort of on an ad hoc basis as --

A. Yeah, as an instance occurs, which do from time to time, then we address them on -- based on issue by issue.

Q. Was there a provision for insurance as part of the severance plan?

A. Regular medical insurance.

Q. What about life insurance, was there any provision for that?

A. (Shaking head.) No.

Q. Disability?

A. Let me see. I doubt it because I retired.

Q. Since you left in February of 1989, have you done any work for RJR as a consultant or an advisor?

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A. I've -- I've done depositions, I've, you know, provided information as requested by them.
Q. What kinds of situations, other than the depositions you've mentioned, have you been involved with where you've provided --
A. On trials.
Q. Trials? Any circumstances that were non-litigation related where you've provided information to the company?
A. Oh, from time to time they've inquired of a -- particular commercial activities, you know, where you can fill in background for them, or in some cases they've asked for some advice.
Q. When you have been involved in those kinds of activities, have you been compensated for your time?
A. No.
Q. When you've been involved in the deposition and litigation aspect of the work that you've done, have you been compensated for your time?
A. No.
Q. Have you done any consulting work with any other tobacco company since you left RJR?
A. No.
Q. And who is your counsel representing you here today?

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A. Mr. Branch.
Q. And how did you go about selecting Mr. Branch as your counsel?
A. I was aware of him, I'd made inquiries in the Atlanta area, he's represented me in other situations, non-tobacco related.
Q. And you mentioned, I think, that RJR is paying Mr. Branch's counsel fees for representing you with regard to this deposition?
A. Yes, they are.
Q. And did you sign a retainer contract with Mr. Branch for this particular representation?
A. No.
Q. Do you know whether RJR signed some sort of a contract with Mr. Branch for representing you in this case?
A. I don't know.
Q. With whom did you meet in preparation for your deposition here today?
A. Mr. Branch, his associate, and our friends from Dallas, or Houston -- Dallas?
MS. McDOLE: Dallas.
A. Dallas.
Q. And you're referring to Ms. Bosworth; is that correct?

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A. Umm-hmm -- Yes. And she had an associate.

MS. McDOLE: Actually it's McDole.

MR. FINZEN: McDole? How did I get the --

MS. McDOLE: That's my maiden name.

MR. FINZEN: Ahh, McDole. Pardon me.

Q. And an associate?

THE WITNESS: What was your associate's --

MS. McDOLE: Not here today.

THE WITNESS: Yes, not here today.

MR. BRANCH: He just wants to know what you can remember, Mr. Johnson, not what she can remember.

THE WITNESS: Oh.

Q. So it was Mr. Branch, Ms. McDole, an associate of hers?

A. (Nodding.)

Q. Anyone else?

MR. BRANCH: I think he said Ms. Tanner, my associate.

A. Yes, Ms. Tanner here.

Q. Anyone else that you can recall being present?

A. No.

Q. And how many times did you meet?

A. Twice.

Q. When was that?

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A. Once yesterday and once the day before.
Q. For how long?
A. Oh, probably all in all, five hours.
Q. Each or total?
A. Total.
Q. Did you review any documents in preparation for today?
A. I think just the subpoena.
Q. You saw no other documents during those sessions?
A. No.
Q. Did you review any deposition transcripts for any witnesses in this case?
A. No.
Q. Did you go through a mock examination in preparation for my questioning of you today?
A. I don't know what you mean.
Q. Did you do a simulated deposition where someone was asking you questions and getting your answers as we're doing here today?
A. There were questions and discussions. It wasn't along the lines of what we're talking about today.
Q. And who of the people present were asking you questions?
A. I guess everybody asked questions from time to

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time.

Q. Did you take notes?

A. No.

Q. Did you bring any documents with you today?

A. No.

Q. Now you are currently a defendant in a smoking-and-health-related case here in Georgia; isn't that correct?

A. Yes.

Q. What's the name of that case, if you recall?

THE WITNESS: Mr. Branch?

MR. BRANCH: If you know, tell him. If you don't know --

A. I don't.

MR. BRANCH: -- or don't remember, tell him that.

Q. Do you know who the other defendants are in that case?

A. No.

Q. Do you know whether RJR is a defendant in that case?

A. No.

Q. What are the nature of the damages that are being sought against you personally?

A. I have no idea.

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Q. Do you have insurance to cover your damages in that case?
A. I doubt it.
Q. Who is your lawyer representing you in that case?
A. Mr. Branch.
Q. Are you paying Mr. Branch for representing you in that case?
A. No.
Q. Who is paying Mr. Branch's fees in the Georgia case?
A. I pay Mr. Branch's fees and RJR reimburses me.
Q. Do you have a -- an agreement of any kind with RJR for that reimbursement?
A. No.
Q. Do you have any kind of an agreement with RJR with regard to payment of your damages in that case if the case is settled or if you were to lose that case?
A. The only document ever -- and this is speculating, I'm sure it's covered by our D&O insurance that carries on after you retire. As a director and officer of the company I suspect it would be covered, what you're talking about would be covered by that.

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Q. Outside of the possibility of some D&O coverage, have you discussed specifically payment of damages with RJR in that case?

A. No.

Q. Do you have plans to discuss that with anyone from RJR?

A. Depends what happens.

Q. Do you have any agreements with any of the other defendants with regard to damages in that Georgia case?

A. No.

Q. And with regard to --

You mentioned the oral contract for the office services. Are you a party to any written agreements of any kind currently with RJR?

A. No.

Q. Have you had any written contract with them of any kind since 1989 to the -- to the present?

A. Yeah, I had a written agreement for the first five years after I retired.

Q. And what were the provisions of that agreement?

A. Pretty well the same as what we talked about. I'm -- Probably identical to what we talked about.

Q. And now you're talking about in terms of the severance terms or the --

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A. No, not severance. No, just the office services.
Q. Okay. So the first five years the office services were the subject of a written agreement?
A. There was a memo, yep.
Q. That had a five-year term to it?
A. Yes, and review.
Q. So after that time the -- the written memo was not rewritten, it's been oral since then.
A. It's been oral.
Q. Have you testified previously before today in any case involving claims of damages related to tobacco and health?
A. No.
Q. Have you testified at trial in any cases involving claims of tobacco and health?
A. No.
Q. Now you mentioned some other testimony that you've been involved with RJR since you left the company in 1989; correct?
A. Yes.
Q. I take it that was not related to tobacco and health?
A. Not at all.
Q. What -- What kinds of cases were those?

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A. Oh, this would be from bondholders, some of it litigation arising out of the -- of the merger in '89.

Q. And in those cases were you represented by counsel?

A. Yes.

Q. And who hired the lawyer that represented you in those cases? Did you directly?

A. No, the lawyers were provided by RJR in that case -- in those cases.

Q. And with regard to those particular litigations, were you in any way compensated for the time that you spent?

A. No.

Q. What is your current occupation?

A. My current occupation?

Q. (Nodding.)

A. I'm the chairman and CEO of a Subchapter S company called RJ -- the RJM Group.

Q. And what is the business of the RJM Group?

A. It's basically investing the assets that I control.

Q. How many people are employed by the RJM Group?

A. One, two, three.

Q. And do -- does the RJM Group engage in any

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business other than the investment of assets you control?

A. Not at this time.

Q. Do you currently serve on any boards of directors?

A. Yes.

Q. Which ones?

A. American Express, Archer Daniel Midland here in America.

(Interruption by the reporter.)

A. And Noma Industries in Canada and par --

Q. Which is that one, I'm sorry?

A. Noma Industries, N-O-M-A, and Power Corporation in Canada.

(Interruption by the reporter.)

Q. And before you became the president and CEO of RJR Nabisco you had occupied other CEO positions with other companies; correct?

A. Oh, yes.

Q. Can you list for me, sort of starting from RJR and going back, which companies those were?

A. Maybe it's easier going the other way.

Q. All right. If that's easier, let's do it that way.

A. In America?

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Q. Anywhere.
A. I'll start -- Okay. I was chief executive officer at Standard Brands in Canada, and then I became chief executive officer at Standard Brands in the United States, and eventually I became chief executive officer of Nabisco Brands in the United States, and in January 1st, 1987 I became chief executive officer of what was then Reynolds Industries, which became RJR Nabisco.
Q. All of these companies you've just mentioned were in the consumer product business; correct?
A. Mainly.
Q. And that's been your area of professional expertise, so to speak, your whole career, hasn't it, consumer products?
A. No.
Q. No? What -- What other businesses have you been in other than consumer-related businesses?
A. I worked for General Electric for 13 years when I came out of college. I worked in some consumer, but a lot of industrial businesses at the same time.
Q. What's the first consumer company that you worked for?
A. Well, you know, part of General Electric, the size of General Electric, I ran their appliance

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operation, I ran the lamp operations at various times. And I was head of merchandising for Eaton's which is a very large retailing company in Canada, and then I was chief operating officer at a company called General Steel Works which was a mixture of consumer and industrial goods.

Q. Is that in order that you just gave, G.E., Eaton's, General Steel?

A. Yeah, and then Standard Brands.

Q. And then to Standard Brands. So really, in terms of a primarily consumer-oriented company, Standard Brands was the first.

A. That was totally because if you call -- you know, there was the industrial ingredient businesses, depends how you want to define that.

Q. Before the merger of Nabisco with RJR, and I believe that was 1985; is that correct?

A. Yes.

Q. Before that merger took place, had you had any experience in the tobacco business?

A. Only as a consumer.

Q. When the merger took place in 1985, what was your position with the company, with --

A. The new company?

Q. -- the new merged company?

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A. I was president.
Q. And that was at a time when it was still called Reynolds?
A. Reynolds Industries.
Q. Industries.
As president of Reynolds Industries, did you become required at that point to familiarize yourself somewhat with the tobacco side of the business?
A. No, not much. I primarily worked on -- it was a five-billion-dollar merger and the major job was integrating all of the Nabisco properties, including tobacco, together with the comparable products in Reynolds.
Q. And as you moved forward from 1985 up to January of 1987 when you became the president and CEO of the -- of RJR Nabisco, did you have occasion during that period of time to familiarize yourself with the tobacco side of the business?
A. Not particularly. It was a peer group that was running beside, I really came from a -- got into the tobacco business, of course I had the other businesses too, in -- in '87.
Q. Beginning then in -- in 1987 when you became the CEO, did you have occasion at that point to familiarize yourself with the tobacco side of the

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business?

A. Yes.

Q. What -- What did you do to familiarize yourself with that part of the RJR Nabisco business?

A. By this, you're basing management practices, the tobacco company reported to me so you had certain areas that you reviewed in terms of their strategic plans, budgets.

Q. How were you staffed at the CEO level to deal with the various parts of the business? What was your organization?

A. My organization I had the -- reporting to me, I was here in Atlanta, all the operations were outside, we had no operating people here in Atlanta, and we had -- tobacco was in Winston-Salem, Del Monte was in Coral Gables, and Nabisco up in New Jersey, and then plus all our international operations that flowed in underneath those. Then reporting to me I had a chief financial officer.

Q. Who was that?

A. Ed Robinson. A general counsel.

Q. Who was that?

A. Harold Henderson. I'm trying to think of how the area was, but it was all our public relations, advertising, buying, all of that area. There was

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John Martin, and then personnel --

Q. John Martin and who?

A. And then personnel. Personnel was the other function.

Q. Okay.

A. So I had finance, personnel, legal and the whole series of administrative services.

Q. The -- John Martin was a PR, advertising?

A. He ran the public relations, he ran the advertising, he ran the -- all of those areas that were bits and pieces you threw in there.

Q. And in terms of the tobacco side of the business itself, who was your principal reporting contact?

A. Mr. Horrigan, who was the chairman of tobacco.

Q. Did you have occasion to review advertising, marketing, that sort of thing for the tobacco side of the business?

A. Yes.

Q. Strategic plans for that side of the business?

A. Yes.

Q. And would that primarily come through Mr. Horrigan or would that come through any of the other areas that you --

A. Mr. Horrigan.

Q. Would you have occasion from time to time to

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

talk with key employees in the tobacco side of the business other than Mr. Horrigan?

A. Yes.

Q. Including some scientists and researchers?

A. Manufacturing mainly.

Q. How about R&D?

A. To a -- Could have been, but it wasn't a big issue other than the development of the Premier product.

Q. Did you have occasion to meet with advertising and marketing types in the tobacco business itself?

A. In the course of reviews.

Q. Mr. Johnson, would you agree that it is a primary obligation for a corporation selling to consumers to be truthful in communicating with the consumers about the products that they sell?

A. I don't understand.

Q. Well in your years of experience in various consumer products businesses, would you agree that a primary duty of a consumer-related business is to be truthful in communicating to consumers of the products about those products?

A. I think that goes for life itself, it should be truthful.

Q. I'm sorry?

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/gzhd0001

A. Should be truthful.
Q. And that certainly would be the case in the business world as well; correct?
A. I would hope so.
Q. And that with regard to the consumer-related products would be true with regard to product labeling; is that correct?
A. Yes.
Q. You -- You label the products with the expectation that consumers will read those labels and rely upon them?
MR. LAYDEN: Objection.
(Interruption by the reporter.)
A. Labels are there to inform the consumers of what the ingredients of the product are. I mean, what the consumer does after they read it, I have no control.
Q. But you have an expectation that you will make those labels truthful and the consumers have the right to rely upon what's -- the information that's contained in those labels?
A. I would hope so.
Q. And would the same be true with regard to product advertising, that you would expect a consumer company that you were involved with to advertise things that were truthful about the products, and

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with the expectation that consumers would rely upon those ads?

A. I would expect they would be, and they're also regulated.

Q. And would it be reasonable, during the period of time that you were at RJR Nabisco, for consumers to rely upon ads that were placed by RJR?

A. I would expect so.

Q. And to your knowledge, based upon your experience with the company, was -- was that true, to your understanding, even before the merger with Nabisco?

A. I can't comment about that. I have no knowledge.

Q. Did you get any sense of it in terms of your historical perspective on the company after coming to it as to whether or not you had a sense that RJR had been truthful with regard to its communications to its consumers prior to 1985?

A. I can't answer that.

Q. Would you at least agree that based upon your experience as the CEO of a consumer company that RJR had a duty to be truthful in its communication with its customers at all times?

A. I didn't direct RJR prior to 1987 so I can't

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answer that.
Q. Well I understand that you weren't personally in charge. I'm asking whether you have a belief that RJR had such a duty, even when you weren't running the ship, prior to 1987.
A. I can't answer that.
Q. Let me show you a document that's been previously marked as Sistad Exhibit Number 2.
I would ask you to take a look at this document, sir, and tell me whether you've ever seen this before.
A. No.
Q. This is a document that's titled, in bold capital letters, "A Frank Statement to Cigarette Smokers." You see that?
A. Umm-hmm.
Q. It's got a --
A. Yes.
Q. -- date at the top of January 1954. You see that?
A. I see that.
Q. And at the right-hand side are a list of sponsors of the Frank Statement, and included within this list is R.J. Reynolds Tobacco Company, as well as other tobacco companies. Do you see that?

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A. Umm-hmm. Yes, I do.
Q. And it's your testimony that prior to me handing it to you just now you've never seen the Frank Statement to Cigarette Smokers before?
A. Never saw it.
Q. Did anyone, during the course of time that you were the CEO of R.J. Reynolds or RJR Nabisco, mention to you that there had been a publication of this type that had been put out in the 1950s by the tobacco company to its cigarette-smoker consumers?
A. No.
Q. Let me ask you to take a look at the document enough to familiarize yourself with it. I want to ask you a couple of questions about some of the things that are contained in the document.
Have you had a chance to review it?
A. Yes.
Q. I'd like to call your attention to the paragraph that begins in the second column after numbered paragraph 4. The one that reads, "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business." You see that?
A. Yes.
Q. Was that statement a true statement as far as

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you were concerned when you were the CEO of RJR Nabisco?

MR. LAYDEN: Objection.

A. Never discussed.

Q. Well as the CEO of the company, --

A. Yeah.

Q. -- would you agree that RJR Nabisco accepted an interest in people's health as a basic responsibility paramount to every other consideration in your business?

A. No.

Q. No?

The next line says, "We believe the products we make are not injurious to health." You see that?

A. Yes.

Q. Was that a statement that you believed was correct when you were CEO of RJR Nabisco?

A. We had labels then and it had all been determined what you said about your product.

Q. I understand, but this statement is "we believe the products we make are not injurious..." Was that your belief when you were CEO of --

A. I had no belief. I had the belief that you put the label on the government told you to put on and it stated their position.

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Q. It stated the government's position, but what was the company's position at that time, sir, with --
A. The company's position was the government's position.
Q. Well did -- did you as the CEO believe that the products you made, the tobacco products that you made at RJR Nabisco were not injurious to health when you were the CEO?
A. I did not have a belief. I had a business to run and these were the terms and conditions under which you sold your product.
Q. Well I will represent to you, Mr. Johnson, that this exhibit was an advertisement that was taken out by the Tobacco Industry Research Committee and published in newspapers, over 400 newspapers in 1954 intended to reach the largest markets in the United States. With that in mind, did you believe, as of 1987 when you were the CEO of the company, that RJR Tobacco, the tobacco side of the business, accepted an interest in people's health as a basic responsibility paramount to every other consideration in the tobacco business?
MS. McDOLE: Object, asked and answered.
MR. BRANCH: Mr. Finzen, that's a severely compounded question. I don't object to your asking

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/gzhd0001

him what his opinion was or what he believes the company's opinion was to the extent he knows it, but I do object to your continuing to try to tie whatever opinion he may have held to a document dated 1954, something over 30 years before he was even in the business and which he said he'd never seen until he walked in here and you handed it to him today.

MR. FINZEN: Okay. I understand. Let me just make two comments. First, we're operating under an order here that says we're -- we're not supposed to have speaking objections of any kind, we're just supposed to use the word "objection" and a brief description if -- if necessary of the substance of the objection, and I'd like to try to stick with that if we could.

As to the specific comments that you made, the question really goes to his knowledge of this statement being true independent of this.

Q. I'm reading it from here, yes, but I'm asking if the statement itself that "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business" was true when you were the CEO of RJR Nabisco in 1987.

A. No.

Q. Was the fact that cigarette smoking was even

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suspected as a cause of serious disease or illness a matter of deep concern to the company when you were CEO in 1987?

A. Not to my knowledge.

Q. Was RJR Tobacco pledged in 1987 to aid and assist the research effort into all phases of tobacco uses and health?

A. I don't know.

Q. Did the company believe, to your knowledge in 1987, that people are entitled to know where RJR stands on issues of smoking and health?

A. Want to try that one again?

Q. Sure. "Did the company believe, to your knowledge in 1987, that people were entitled to know where RJR stands on issues of smoking and health?"

A. First of all, there's no such thing as a company that lives or breathes or does anything else. It's a legal entity. Our position was the position that we put on our products.

Q. I understand.

A. And that's what I believe.

Q. I understand, but obviously a company can only -- can only exist --

A. I'm not a company. I wasn't a company.

Q. I understand you weren't a company, but a

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company can only exist through its employees and then those employees act to bind the company. Do you understand that?

A. No.

Q. You do not understand that the -- that the actions of management employees at your level were able to bind the company legally to --

A. You just said at my level. That's -- So me is the only one at my level.

Q. Okay. Others in management --

A. You ran the business with full integrity, of course.

Q. And was it the position of the management of RJR Tobacco in 1987 that you believed that people were entitled to know where RJR Tobacco stood with regard to issues of smoking and health?

A. The company knew -- The customers knew exactly where we stood, it was right on our packages.

Q. And in advertisements that the company might --

A. Yes.

Q. -- run.

A. Yeah.

Q. Public statements that the company would make?

A. Warning labels were on all the ads.

Q. And to the extent that there were statements

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Source: www.tobaccoindustrydocuments.ucsf.edu/docs/gzhd0001

made beyond labels, such as advertisements of the kind that Sistad Exhibit 2 purports to be --

A. Oh, I can't comment on something that happened in 1954. I don't know the background, I don't know the knowledge. I don't know the environment that it came out of.

Q. If --

A. They might have felt this was -- that's how they felt AND they might have passed a polygraph on that.

Q. But if a similar kind of advertisement, I'm not saying this ad, but a similar kind of advertisement were put out by RJR Tobacco --

A. Well with --

Q. -- while you were there in 1987, that would be something else that you would expect your consumers to rely upon; correct?

MS. McDOLE: Objection, I don't know what you mean by "similar advertisement."

MR. FINZEN: An advertisement run in 400 newspapers around the country.

MS. McDOLE: Same objection.

A. I just don't know specifically what you're referring to.

Q. Well --

A. If I ran an ad that looked like this in 1987?

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Q. Right. You would expect, by running an ad and putting it out there, that people would rely on it, is that correct? If you had done it.

A. People would read it.

Q. Would you expect them to rely on it?

A. I don't believe anybody that will necessarily a hundred percent rely on anything they read.

Q. But was it your expectation that people had a right to rely on it if you ran an ad of this type?

A. I don't know, I don't know what you're talking about.

Q. If you believed at any time while you were the CEO of RJR Nabisco that cigarettes were addictive, you would have told that to the public, wouldn't you?

A. What is "addictive"? Habit forming?

Q. Well in fact you did believe that cigarettes were addictive; isn't that correct?

A. In the total concept I think coffee could be addictive, Coca-Cola could be addictive, but I'm not a scientist.

Q. If you believed that it was addictive in any sense, you would have told that to the public when you were CEO, wouldn't you?

MS. McDOLE: Objection to the form.

A. I would have to define exactly what it is people

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

are talking about.

Q. And if you believed it was addictive, would you disclose that to the consuming public even if your competitors weren't disclosing that?

MR. BRANCH: Excuse me, is "smoking" the antecedent of "it"?

MR. FINZEN: Yes. No, no, no. I'm sorry. Let me rephrase the question.

Q. Would you disclose that smoking was addictive even if your competitors were --

A. If I knew what -- You have to tell me what "addictive" is.

Q. Let me finish the question.

A. I can't answer it unless I understand what you're saying.

Q. Let me finish the question and get your answer.

If you believed that it was addictive in any way, you would disclose that to the public even if your competitors were not disclosing the fact that it was addictive, wouldn't you?

MS. McDOLE: Objection to the form.

A. I can't answer that.

Q. Would you agree that while you were CEO of RJR Nabisco that it -- it, the company -- did not have the right to sell a legal product illegally?

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A. I don't know what you mean.
Q. Well, for example, --
A. Give me an example.
Q. For example, by making untrue statements about the product.
MR. BRANCH: And you represent to him that that would be illegal?
MR. FINZEN: Well he asked me for an example.
Q. For example, would you agree that --
A. What -- How do you sell illegally? What do you mean, "illegally"? I mean, --
Q. Would you agree that --
A. -- out the back door or --
Q. Well let me ask the question this way. Would you agree that while you were CEO, RJR did not have the right to sell legal products by making false representations about those products?
A. I just -- I can't answer those kind of questions. I mean, we ran a legitimate business.
Q. Well, Mr. Johnson, you would agree with me, would you not, that cigarettes are addictive?
A. Unless you're going to tell me what we're talking about as addictive, "addictive" is a word that could be used by all kinds of people. I can use

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it easily, but what does the scientist say? Some people find things that are addictive that aren't addictive.

Q. Well you have publicly stated that cigarettes are addictive, haven't you, sir?

A. In my -- In my way of saying addictive, as I have said coffee can be addictive, it is, but it doesn't mean that you can't stop using the product. It's got appeal.

Q. You did publicly state that cigarettes are addictive, didn't you?

A. I was in an interview and they said would -- are -- "What about cigarettes?" I said cigarettes, like a lot of things, are very addictive. You get very attached to them.

Q. And that's been published in newspapers, has it not?

A. Yeah.

Q. How did you mean "addictive"?

A. Well I just mean that you get very attached, but it doesn't mean you can't stop it.

Q. And your reference was specifically that tobacco --

A. That was my personal opinion.

Q. You made the statement that tobacco in

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cigarettes is addictive publicly; correct?
A. I don't know what I said, but I -- I did use that I find it -- in my conversation, to go beyond what's in there, is strictly interchangeable. It's very habit forming and very pleasurable.
Q. And specifically you were referring to the nicotine in tobacco that was addictive, weren't you?
A. No, I -- No, the product.
Q. The product?
A. Yeah.
MR. FINZEN: Well, let's mark this next, please.
(Plaintiffs' Exhibit 1601 marked for identification.)
BY MR. FINZEN:
Q. Mr. Johnson, handing you now what's been marked as Exhibit 1601, which is a Wall Street Journal reprint, a story dated October 16, 1994 called "Who's News, Big Spender Finds a New Place to Spend," by Eben Shapiro, staff reporter of the journal. You see that?
A. Yeah.
Q. And this is an article about you, is it not, sir?
A. Yep. Amongst other things.

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Q. You've seen this before?
A. Umm-hmm, a long time ago.
Q. I'd like to call your attention, if you would, to page 2, the third paragraph. The second sentence of that says: "Of tobacco, Mr. Johnson says flatly, quote, of course it's addictive. That's why you smoke the stuff, period, closed quote." You see that?
A. Yep.
Q. And you were referring, sir, to tobacco being addictive, and specifically the nicotine in the tobacco, were you not?
A. No.
Q. What is it about tobacco that you meant was addictive if you weren't referring to the nicotine?
A. It's attractive, it's pleasurable, that's why you smoke it.

(Plaintiffs' Exhibit 1602 marked for identification.)

BY MR. FINZEN:
Q. Showing you now, Mr. Johnson, what's been marked as Plaintiffs' Exhibit 1602, an article from the Toronto Star newspaper of October 24, 1993 entitled "The biggest deal in history didn't sink F. Ross Johnson." Do you see that?

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A. Right.
Q. Written by Joan Sutton Straus. Have you seen this article before?
A. Yeah, a long time ago. What was the date on that? Yeah, '93.
Q. October 24, 1993.
A. Umm-hmm.
Q. I would ask you to turn to the page at the top that has page 5 on it. It's actually the third page of the document.
A. That says page 3?
Q. No, that says page 5, but it's actually the third page.
A. Okay. Here we go, "FOCUS"?
Q. Right.
A. Got it.
Q. The first full paragraph there, "But despite the defence," it says, "Johnson admits he's given up smoking." Do you see that?
A. Yep.
Q. Quote, when a friend had a heart attack, Laurie convinced me to give it up. I went cold turkey, and you're dingy for awhile, you don't focus as well. Tobacco is really, really addictive, closed quote. Do you see that?

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A. Yep.
Q. And there specifically again you were referring to the nicotine in tobacco as being addictive, weren't you?
A. No.
Q. What is it that you were referring to as addictive when you made that statement?
A. Well, it's a pleasure, it's a very pleasurable habit that you grow with and it takes awhile to -- to give it up.
Q. Had you --
Had you ever tried quitting smoking before that time?
A. No.
Q. Had you ever tried to reduce the amount that you smoked before that time?
A. No, not particularly.
Q. Had the friend that's referenced here that had the heart attack, was he a smoker or she a smoker?
A. Umm-hmm. Umm-hmm. (Nodding.)
Q. And Laurie that's mentioned here is your wife; is that correct?
A. Former wife.
Q. And did Laurie talk to you specifically about quitting in reference to the friend's heart attack

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/gzhd0001

because of her concern that there was a problem associated between smoking and heart disease?
A. Yes.
Q. And did her talking to you about that convince you that there was an association between smoking and heart disease?
A. Well I think anybody with any common sense, if you read the labels on the package, says that this can be caused.

(Plaintiffs' Exhibit 1603 marked for identification.)

(Discussion off the stenographic record.)

BY MR. FINZEN:
Q. Mr. Johnson, I'm showing you now a document that's been marked Plaintiffs' Exhibit 1603. It's labeled "PRIVATE AND CONFIDENTIAL" at the upper right and then it says, "TRANSCRIPT, F. ROSS JOHNSON INTERVIEW WITH JOHN HELYAR OF THE WALL STREET JOURNAL," it bears the date of Monday, August 1, 1988. It's Bates numbered 506896668 through 6699, and I'm referring to a number that's in the lower right-hand corner of the --
A. Oh, okay.
Q. The Bates number.
A. Got it.

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

Q. This purports to be a transcript of an interview between you and Mr. Helyar on the date of August 1, 1988. Have you seen this document before?

A. I never read it in total.

Q. You have seen it but you've never read it?

A. I -- In total. I might have written parts and pieces of it. I don't remember it.

Q. Let me ask you, sir, if you would, to turn to page 13 at the bottom of the page.

MR. BRANCH: I'm sorry, page?

Q. Page 13, which bears Bates numbers 506896680. You see that? Do you have that page?

A. Yep.

Q. At the bottom of the page there is a question by the interviewer, how do you think it is different or how is it being driven, and then there is an answer by you. Do you see that?

A. Umm-hmm.

Q. About two thirds of the way down in your answer you state, "Now does this all satisfy, does it have nicotine in it?" Yes, "if it didn't have nicotine in it you wouldn't have a cigarette. You'd just be sucking on air. So, nicotine is addictive, but it doesn't hurt you." Do you see that?

A. Yep.

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Q. Now there specifically you're referring to the substance nicotine as being addictive. Isn't that correct, sir?

A. Yeah.

Q. And does that refresh in any way your recollection about what it is in 1993 and 1994 you meant was addictive when you said that tobacco and smoking is addictive that you were referring to the nicotine?

A. No, cigarettes -- there's a lot of dimensions to cigarettes besides nicotine.

Q. And in August of 1988 you were still the CEO of RJR --

A. Yeah.

Q. -- Nabisco; correct?

A. Right.

Q. And at that point in time, and in fact at every point in time up until August of 1988, RJR had publicly denied that tobacco was addictive, hadn't it?

A. I don't know. I -- I can't answer that.

Q. Well at any time while you were the CEO of RJR Nabisco, do you -- are you aware of the company publicly stating that nicotine was addictive?

A. "Was addictive"? No, I'm not aware of that.

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

I'm not aware of them saying it wasn't addictive either.

Q. In fact it was in the --

A. But we haven't defined what addictive is. I had my interpretation of addictive, and that was my way of communicating.

Q. In fact, the -- in 1988 the surgeon general of the United States had found and reported to the American public that nicotine was addictive while you were the CEO of RJR Nabisco. Do you recall that?

A. No.

Q. Do you recall what the response of -- of RJR Nabisco was to the surgeon general's finding that nicotine was addictive?

A. No.

Q. Do you recall what the response of the tobacco industry was to the surgeon general's report that nicotine is addictive?

A. No.

Q. Let me show you what has previously been marked as Plaintiffs' Exhibit 327. In fact let me -- let me get that back from you, sir.

MR. FINZEN: Off the record a second.

(Discussion off the stenographic record.)

(Recess taken from 10:25 to 10:38 a.m.)

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MR. FINZEN: We're at a point now where I'm about to introduce some previously marked exhibits that are not RJR documents and are not documents, as best I can tell, that were produced by any of the other defendants who are present here at the deposition. It's my intention to go forward and utilize these documents, and I think that if there is a problem in terms of contacting the other defendants, that's the responsibility of -- of RJR. This deposition was noticed some time ago, RJR has been aware of the fact in meeting with Mr. Johnson before the deposition that he was not going to be signatory to the confidentiality agreement, and if arrangements of some kind with documents that were predesignated that weren't RJR documents needed to be made with the other defendants, it's my position that -- that RJR should have been taking the laboring oar on that so --

MS. McDOLE: I appreciate that that's your position. I totally disagree with it. I think if anyone's -- if it was anyone's obligation, it was your own. You've known for over a month now that this was an issue, and it's not my responsibility.

MR. FINZEN: Well this is a -- a waif that no one is going to climb, I guess, but it's not my

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order and I think it's clear from the record that RJR has met with Mr. Johnson and is aware of this and so I'm going to go forward.

MR. BRANCH: Well I don't have a dog in this fight, but I will say for the record that it really doesn't matter to Mr. Johnson or me what position any other party takes. He simply does not want, doesn't need and doesn't have to assume the obligations of a confidentiality agreement, not being a party to this case, and it's on my advice, no one else's, that -- that he's not signing the confidentiality agreement. So for whatever that's worth, you got it.

MR. FINZEN: But I take it the agreement that was made previously on the record that he intends to keep confidential what transpires here today will apply to documents that are not RJR documents as well.

MR. BRANCH: Yeah.

MR. LAYDEN: Just so the record's clear with respect to Philip Morris, my understanding is that the document you're about to show the witness doesn't appear to be a Philip Morris document. I'm going to object to showing Philip Morris documents until such time as I can get in contact with someone

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on the West Coast to discuss this issue and decide whether it'll be permissible, from RJR's perspective, to show this witness Philip Morris documents. So I'm going to object to any Philip Morris documents which you may have. You indicated that you might, but you don't know at this point whether you had such documents.

MR. FINZEN: Right, right.

MR. LAYDEN: Okay.

BY MR. FINZEN:

Q. Mr. Johnson, I'm going to show you what's been previously marked in this litigation as Plaintiffs' Exhibit 327. This is a document Bates stamp numbered MNAT 00639587, and it is -- purports to be a release, a press release from the Tobacco Institute in Washington, D.C. dated May 16, 1988. The title of the document is "CLAIMS THAT CIGARETTES ARE ADDICTIVE CONTRADICT COMMON SENSE." Do you see that?

A. Umm-hmm.

Q. Have you ever seen this document before?

A. No, I haven't.

Q. Do you recall --

Do you know what the Tobacco Institute is?

A. Yes.

Q. And was RJR a member of the Tobacco Institute?

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

A. I believe so.
Q. And were they in 1988, to your knowledge?
A. Oh, yes.
Q. Do you recall that the formal position opposing the surgeon general's report on nicotine being addictive was taken by the Tobacco Institute?
A. I don't recall that specifically, no.
Q. But it's clear from this press release, is it not, that the Tobacco Institute did oppose the surgeon general's finding that nicotine was addictive?
A. Yes.
Q. And specifically stated that, for example, in the second full paragraph with regard to people who have quit, that these figures and common sense contradict any claim that smoking is an addiction. You see that?
A. Yes.
Q. And having seen this document, does that in any way refresh your understanding of what RJR's position was in 1988 with regard to the surgeon general's finding on addictiveness?
A. No. I think it -- the position probably would come through the Tobacco Institute. And once again, it's a definition of addiction which I notice they

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use "quote unquote" on addiction. So it's a semantic issue. War of words.

Q. Let me show you now what has been previously marked in this litigation as Plaintiffs' Exhibit 447. This is a document Bates stamp numbered -- well there's two Bates stamp numbers, I'll read them both, TIMN 0125189 and COR TI 000450. This also purports to be a press release dated July 29, 1988 by the Tobacco Institute in Washington, D.C.

Have you ever seen this document before?

A. No.

Q. From reviewing the document, however, this would appear to be another Tobacco Institute release oppose -- opposing the surgeon general's finding that nicotine is addictive?

MR. BRANCH: The court reporter has put a question mark at the end of that phrase but I'm not sure that he understands it to be a question since it reads so like a statement.

MR. FINZEN: Well it was intended to be a question. I understood he was reading the document to answer it.

MR. BRANCH: I'm sorry.

MS. McDOLE: I'll object.

A. What would you like me -- What was the

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question?

Q. The question is: After reviewing this document, do you agree that this appears to be another Tobacco Institute press release opposing the surgeon general's finding that nicotine is addictive?

MS. McDOLE: Objection to the form of the question, to the foundation.

A. That's a counter.

Q. A counter to it?

A. To what the surgeon general said. They had their experts, he's got his.

Q. Do you recall inside RJR at that time there being efforts made to find ways to publicly challenge the surgeon general?

A. No.

Q. Do you recall there being discussion that if the surgeon general's finding that nicotine was addictive went unchallenged that it could lead to additional legislation against the tobacco industry that could have devastating economic effects on the industry?

A. No, no.

(Plaintiffs' Exhibit 1604 marked for identification.)

(Discussion off the stenographic record.)

BY MR. FINZEN:

http://legacy.library.ucsf.edu/tid/jqm05a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/gzhd0001

Q. Mr. Johnson, I'm showing you now what's been marked as Plaintiffs' Exhibit 1604, and it is a document dated May 9, 1988 bearing Bates stamp numbers 506387706 through 7707, and it is a memorandum to a Mr. R. A. Kampe or Kampe, K-A-M-P-E, titled, "RE: Nicotine Allegations," from a Mr. D. N. Iauco, A-I-U-C-O.

(Telephone interruption.)

Q. Do you see that?

A. Umm-hmm. Yes, I do.

MS. McDOLE: I think you misspoke. It begins with an "I." I-A.

MR. FINZEN: I'm sorry?

MS. McDOLE: I A.

MR. FINZEN: I'm sorry. I meant to say I. If I didn't, I-A-U-C-O.

Q. Do you know who Mr. R. A. Kampe is?

A. I know Mr. Kampe, he was a product manager.

Q. And do you know who Mr. Iauco is?

A. No.

Q. Have you seen this document before?

A. No.

Q. It references in the first paragraph a meeting with a Dr. Wagner. Do you know who Dr. Wagner is?

A. No.

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Q. The first sentence of the first paragraph says, "In our meeting with Dr. Wagner last Friday, we discussed the means by which the Surgeon General could be challenged for his seemingly unfounded allegations that nicotine is an addictive drug." Do you see that?

A. Yes.

Q. Does that refresh in any way your recollection as to there being an effort inside RJR in 1988 after the surgeon general's report on the addictiveness of nicotine to find ways to challenge those allegations?

A. No.

Q. The second sentence says, -- I'm sorry the third, no the second full sentence says: "We are concerned that if these claims are not challenged by responsible members of the scientific slash medical community, they could very well lead to additional restrictive legislation just as the Surgeon General's conclusions on ETS have resulted in such emotional and unnecessary reactions." You see that?

A. Yeah.

Q. Do you have any reason to doubt that the actions that are described in this memorandum were taking place at RJR in May of 1988? That is, discussions about ways to challenge the surgeon general's

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allegations on nicotine being addictive.

A. Obviously they were here.

Q. And -- Well that's what the memo says.

A. Yeah.

Q. I'm asking from your personal knowledge, --

A. No.

Q. -- whether you have any reason to doubt that in fact those actions were going on.

A. No reason to.

Q. On the second page in the carryover, or actually the first full paragraph on the top of the page Mr. Iauco says, "I believe it is important that we identify the means to effectively challenge the Surgeon General on these irresponsible pronouncements that can have devastating effects on the industry." You see that?

A. Yes.

Q. Do you know what kind of devastating effects the surgeon general's report on nicotine could have on the tobacco industry?

A. No.

Q. The reference in the first paragraph to "additional restrictive legislation," was there a discussion about re -- additional restrictive legislation that may flow from the surgeon general's

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findings on nicotine that you can recall in 1988?
A. No.
Q. Were you involved in any such discussions?
A. No.
Q. Were you aware at that time in 1988 that there was information that was part of the records of RJR Tobacco showing that the company believed that nicotine was addictive prior to 1988?
MS. McDOLE: Objection to the form.
A. No.
Q. Had anyone discussed the issue of the addictiveness of nicotine with you prior to 1988?
A. No.
Q. The reference you made in the news articles and the interview that we've previously seen about nicotine being addictive, what was the source of your knowledge or information about that?
MS. McDOLE: I'm sorry. Could I have that question back?
(Record read by the reporter.)
MS. McDOLE: I'll object to that because there was only one article that I recall the transcript --
A. And I never said it was nicotine in the article.
Q. In the interview you said nicotine is addictive;

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correct?

A. No, I don't believe so. Was this the -- This is on the development of --

Q. Right. It was Exhibit 1603, page 13. "So, nicotine is addictive..."

A. Do I say that? I could have said it, but I don't see where I said it. Okay.

Q. The references you made to nicotine being addictive there and to smoking, tobacco smoking being addictive in the two articles, what was the source of your knowledge and information about addictiveness there?

A. Just my own personal observations.

Q. Mr. Johnson, let me show you what's previously been marked in this litigation as Plaintiffs' Exhibit 1057. This is a document marked "RJR CONFIDENTIAL, RESEARCH PLANNING MEMORANDUM ON THE NATURE OF THE TOBACCO BUSINESS AND THE CRUCIAL ROLE OF NICOTINE THEREIN," bearing Bates numbers 500915683 through 5691. Have you seen this document before?

A. No.

MR. BRANCH: Turn over to the last page and it'll tell you that.

Q. This document on the last page is signed by Claude E. Teague, Jr and dated April 14, 1972. Do

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

you see that?

A. I see it.

Q. Do you know who Claude Teague is?

A. No idea.

Q. He's not someone you ever met while you were at RJR Nabisco?

A. Not to my knowledge.

Q. It's our information that Mr. Teague left the company, retired in February of 1987 as the director of research and development administration.

A. At Reynolds?

Q. Yes. You never met him?

A. Never met him, never heard of him.

Q. Take a look if you would, please, at the first page of the -- of the document, and in the first paragraph Mr. Teague, says, "In a sense, the tobacco industry may be thought of as being a specialized, highly ritualized and stylized segment of the pharmaceutical industry. Tobacco products, uniquely, contain and deliver nicotine, a potent drug with a variety of physiological effects." You see that?

A. Yes.

Q. Was it your understanding while you were at RJR that nicotine was a potent drug with a variety of physiological effects?

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A. Never saw that definition.
Q. Had anyone ever mentioned that to you?
A. No.
Q. It goes on to talk about the satisfaction derived by the smoker from nicotine, and a little further down in that first paragraph says his choice of product and pattern of usage are primarily determined by his individual nicotine dosage requirements and secondarily by a variety of other considerations that he goes on to mention. You see that?
A. Umm-hmm. Yes.
Q. Was it your understanding while you were the CEO of RJR that your customers', smoking customers' choice of product and pattern of use were determined by individual nicotine dosage requirements?
A. No.
Q. He concludes that paragraph by saying, "Thus a tobacco product is, in essence, a vehicle for delivery of nicotine designed to deliver the nicotine in a generally acceptable and attractive form. Our Industry is then based upon design, manufacture and sale of attractive dosage forms of nicotine, and our Company's position in our Industry is determined by our ability to produce dosage forms of nicotine which

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have more overall value, tangible or intangible, to the consumer than those of our competitors." Do you see that?

A. Yes.

Q. Is that an understanding that you had as to the --

A. No.

Q. -- tobacco business while you were CEO?

A. No.

Q. You'd never heard anyone express that?

A. No.

Q. The first sentence of the next paragraph says, "The habituated user of tobacco products is said to derive satisfaction from nicotine." Did you understand that to be a true statement while you were CEO of RJR?

A. I can't answer that. No opinion.

Q. On the next page of the memorandum which bears page 3 at the top, the first full paragraph, Mr. Teague says, Happily for the tobacco industry, nicotine is both habituating and unique" to "its variety of physiological actions, hence no other active material or combination of materials provides equivalent, quote, satisfaction, closed quote." You see that?

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A. I see it.
Q. And was that your understanding while you were CEO of RJR that nicotine was both habituating and unique to its variety of physiological actions?
A. No.
Q. You had no knowledge about that?
A. No.
Q. Would you expect that the director of research and development administration would be knowledgable within RJR Tobacco of issues that are being commented upon by Mr. Teague?
A. Perhaps.
Q. He says in the first sentence of the next paragraph that, "If nicotine is the sine qua non of tobacco products and tobacco products are recognized as being attractive dosage forms of nicotine, then it is logical to design our products -- and where possible our advertising -- around nicotine delivery rather than 'tar' delivery or flavor." You see that?
A. Yes.
Q. Was it your understanding that there was an effort in research and development at RJR Tobacco to design cigarettes in ways that would make them attractive dosage -- make them provide attractive dosage forms of nicotine?

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A. No.
Q. You'd never heard anyone express that?
A. No.
Q. Had you had occasion to talk with anybody in the research and development area about nicotine delivery of -- of RJR Tobacco products?
A. No.
Q. Having seen this document, does it in any way confirm your belief that nicotine is addictive in tobacco?
A. No.
Q. It doesn't.
A. (Shaking head.)
Q. You had made a comment in the interview that we looked at which was Exhibit 1603 I believe, yes, 1603, with regard to addressing Premier that it -- that the product did have nicotine in it. Without nicotine it wouldn't be a cigarette, it would just be puffing air, I think you said. Do you recall that?
A. Umm-hmm.
Q. Was that your understanding that in order to be successful as a cigarette product that the products of RJR Tobacco had to have nicotine in them?
A. That was our understanding.
Q. And it was true, was it not, that no one had

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ever become a cigarette smoker by smoking cigarettes that did not contain nicotine.

A. That wouldn't be a cigarette.

Q. It wouldn't be a cigarette --

A. No.

Q. -- if it didn't have nicotine.

A. No. If I smoked a straw, I guess I wouldn't move to cigarettes.

Q. And was it your understanding that nicotine within the cigarettes did create a physiological reaction in the smoker?

MS. McDOLE: Objection, the assumption that he had an understanding.

A. I don't --

Q. You have to answer audibly.

A. No, I'm just saying I don't understand your question.

Q. The question is: "Was it your understanding that nicotine within the cigarettes did create a physiological reaction in the smoker?"

A. Oh, I looked at the total cigarette, and nicotine was -- they felt was a necessary component.

Q. Who is "they"?

A. The people that merchandise and the people that buy the product.

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Q. Okay.
A. You have to look at your end customer.
Q. And the end customer, ultimately, the smoker.
A. They felt that the end customer, that you would not do too well putting a product on the market that did not involve any nicotine.
Q. And again the "they" are the merchandising people?
A. Customers.
Q. The customers.
A. Customers. People who are going to buy, use it.
Q. Okay. The customers wouldn't buy it if it didn't have nicotine --
A. (Nodding.)
Q. -- and the people that felt that way --
A. That was their --
Q. -- and the people that felt that way inside RJR Tobacco were the research scientists?
A. No, people with common sense.
Q. Like?
A. Like the people that have to go out and sell the product.
Q. Which would be the marketing people.
A. Would be your salespeople.
Q. Okay. What knowledge do they have about why it

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is people wouldn't buy cigarettes that didn't contain nicotine?

A. Because products that -- cigarettes that didn't contain nicotine didn't sell.

Q. And that was sort of a historical --

A. That's pretty definitive.

Q. Okay. And that was pretty historical within the tobacco industry itself; correct?

A. I can't answer that.

Q. It was at least for RJR Tobacco.

A. (Nodding.)

Q. Correct?

A. That's right.

Q. You have to answer audibly so that she can take it down.

Let me show you a document now that's previously been marked as Plaintiffs' Exhibit 1085 in this litigation. It is a memorandum that says at the top, "Talk delivered to RJR Tobacco Company management June," it looks like 23, "1974 and RJR Tobacco International management August 4, 1976 - by Murray Senkus" bearing Bates numbers 501525355 through 5366.

Is this a document that you've ever seen before?

A. No.

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/gzhd0001

Q. Do you know who Murray Senkus --
A. No.
Q. -- is?
I will represent to you that at his deposition he said he retired in 1979 as the director of scientific affairs for RJR Tobacco.
In this talk that Mr. Senkus gave, on the second page of the talk in the middle of the page he says, "In smoking the effect produced on the human body is ascribable mainly to nicotine." Do you see that?
A. Yes.
Q. Was that your understanding as the CEO of RJR Tobacco in 19 --
A. I wasn't the head of RJR Tobacco.
Q. Chairman or the CEO of RJR Nabisco.
A. Right.
Q. Was that your understanding while you were the CEO, that smoking -- the effect produced was ascribable mainly to nicotine?
A. No.
Q. And then the next page, in the middle of the page on page 3 he says, "The nicotine in the blood acts upon the central nervous system..." Did you have an understanding while you were CEO that nicotine acted on the central nervous system?

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A. No.
Q. He then says, "...an individual who smokes regularly thoroughly enjoys this sensation," referring to the action of nicotine. Do you see that?
A. No. Umm-hmm.
Q. Is that your understanding --
A. No.
Q. -- when you were CEO?
A. No.
Q. He then says, "It can be assumed that the amount of nicotine that is required to get this desired effect varies from person to person." Was that your understanding while you were the CEO of RJR?
A. No.
Q. Had anybody ever mentioned that to you?
A. No.
Q. Had you talked with any of the R&D people about what was going on inside the company with regard to nicotine within the cigarettes?
A. No.
Q. Did you feel that as the CEO of the company you had some obligation to -- to learn what was going on with regard to nicotine in the cigarettes that RJR was selling, especially when the surgeon general made

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his finding that nicotine was addictive in 1988?
A. No.
Q. You made no effort to find out at that time?
A. No.
Q. Did you leave that up to the scientists and the R&D people within the company?
A. I left it up to the regulators.
Q. Well the regulators weren't making cigarettes at RJR Tobacco though; correct?
A. Well they determined what the cigarettes were going to be. They determined what labels went on the packaging.
Q. The regulators didn't determine what level of nicotine went into the cigarettes that RJR made; correct?
A. Not to my knowledge.
Q. And that was something, as CEO, that you left up to the scientists and the manufacturing types?
A. They'd been doing it for 200 years. It wasn't a secret.
Q. Would you agree with Mr. Senkus' statement on page 4, at the top of the page, where he says, "Without any question, the desire to smoke is based on the effect of nicotine on the body"?
A. No.

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Q. You would not agree with that?
A. No. I have no opinion.
Q. You have no opinion one way or the other?
A. No.
Q. And again, with regard to nicotine being a significant subject within the tobacco industry in 1988, that was not something that you personally involved yourself with.
A. No.
Q. If you turn, please, to page 6, and it's -- you can't see it at the top, it's blocked out, but it's Bates number 5360, the last four numbers of the Bates number at the right.
A. Got it.
Q. Do you have that page?
A. Umm-hmm.
Q. At the bottom of that page and going over to the top of page 7 Mr. Senkus says, "However, the amount of nicotine that one can get in the lungs from low tar cigarettes is much less."
A. Just a moment here. Where are you?
Q. At the very bottom of the page, the last --
A. "With the low-tar cigarettes one can adjust the flavor"?
Q. Right.

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A. Okay.
Q. Starting then with "however."
A. "However, the amount." Yeah.
Q. "...the amount of nicotine that one can get in the lungs from low tar cigarettes is much less. So the smoker then resorts to other means to get the nicotine he needs in the blood from low tar cigarettes by longer puffs, by bigger puffs, by more frequent puffs, and also by smoking more cigarettes each day. It has been observed that as one switches from a nonfilter to a filter, one smokes more cigarettes per day. But eventually one can change his style of smoking so that one can get enough nicotine in the blood during the inhaling step by changing the smoking style; i.e. longer puffs, bigger puffs, and more frequent puffs. Surveys have shown that in switching to lower tar cigarettes, smokers have not necessarily increased the number of cigarettes per day." Do you see that?
A. Umm-hmm.
Q. Was --
A. Yes.
Q. -- that your understanding with regard to the RJR low-tar products that were being sold while you were the CEO of RJR Nabisco, that people would adjust

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their smoking habits to obtain the required amount of nicotine from the low-tar cigarettes?

A. Never heard of it.

Q. No one discussed that with you?

A. No.

Q. Anyone discuss with you the -- the subject generally of smoker compensation?

A. No.

Q. That's not a subject with which you were familiar?

A. (Shaking head.) Never heard of it.

Q. Would you agree as -- as the chairman of the company, I'm sorry, the CEO of the company, I guess I just promoted you there. As the CEO of the company --

A. Demoted me.

Q. Demoted you.

A. Chairman made a lot less money.

Q. Then I apologize.

A. You cost me money to my family.

Q. I apologize for demoting you.

As CEO of the company in 1987 and 1988, if in fact the smokers of RJR Tobacco products that were low tar were adjusting compensating the way they smoked those cigarettes so that at the end of the day

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they got as much tar and nicotine as they would from a regular full-flavored cigarette, is that something as chairman that you would have expected RJR to have told smokers?

MS. McDOLE: Objection to the form of the question.

A. I have no idea.

Q. You have no opinion one way or the other?

A. I have no opinion because I don't know if it's a fact.

Q. If -- The question presupposes it. Let me ask you that way.

If that were a fact, as CEO would you expect the company to advise smokers that indeed they weren't getting less tar in a low-tar cigarette?

MS. McDOLE: Objection to the form of the question.

A. I -- I have no idea. I couldn't answer it.

Q. So you have no opinion one way or the other.

A. Have no opinion.

(Discussion off the stenographic record.)

Q. Let me show you now what's been marked previously in this litigation as Plaintiffs' Exhibit 1087. This is a document bearing Bates numbers 500790776 through 0784. It's dated March 28, 1972,

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and it is written and signed on the last page by Claude Teague, Jr, and it bears the names -- has a "to," I believe, in the upper left Mr. E. A. Vassallo or Vassallo and Mr. Murray Senkus. We've already talked about Mr. Teague and Mr. Senkus. Do you know who Mr. Vassallo is?

A. I have no idea.

Q. Is that a document --

The title of the document is "A GAP IN PRESENT CIGARETTE PRODUCT LINES AND AN OPPORTUNITY TO MARKET A NEW TYPE OF PRODUCT."

Have you ever seen this document before?

A. No.

Q. In this document, on page 3, second paragraph, first sentence Mr. Teague says, "I believe that for the typical smoker nicotine satisfaction is the dominant desire, as opposed to flavor and other satisfactions." Do you see that?

A. Yeah.

Q. Mr. Teague was a research scientist in the R&D department in 1972. Would you have any reason to doubt the accuracy of this statement?

MR. LAYDEN: Objection.

MR. FERGUSON: Objection.

(Interruption by the reporter.)

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A. It's his belief. I have no opinion.
Q. You have no opinion one way or the other?
(Interruption by the reporter.)
A. No.
Q. And the next page, on page 4, in the third paragraph, first sentence, he says, "In today's market it's reasonable to believe that, given the choice, the typical smoker will choose and use the cigarette which delivers the desired, required amount of nicotine, with satisfactory flavor, mildness and other attributes, accompanied by the least amount of tar." You see that?
A. (Nodding.)
Q. Did you have an understanding that tar delivery was an important factor in the marketing of RJR Tobacco products while you were the CEO?
A. It was a statistic that was regulated that was put on the packages, put on the advertising.
Q. Was it your understanding that the company was making efforts to reduce the amount of tar in its products as much as possible?
A. Not necessarily.
Q. Was it your understanding that the people who linked smoking and disease tended to make the link for that -- causal link for that the tar content of

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the smoke?

A. They may have.

Q. You didn't have an understanding about that, though, that --

A. There were low-tar products.

Q. Yes.

A. The people designed low-tar products, they -- and people took -- and the buyers just made their selection.

Q. But the question is whether your understanding that the reason those low-tar products were around is because it is the tar in cigarette smoke that had been alleged to be the causal link between various diseases and cigarette smoking.

A. It may have been alleged.

Q. You don't know one way or the other?

A. Certainly no scientific background on it or fact on it.

Q. But were you aware that those were at least the allegations?

A. There were lots of allegations.

Q. And was at least one of those allegations that it was the tar content of the smoke that was the causal link for diseases that were linked to cigarette smoke?

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A. Could have been.
Q. You believe you may have heard that?
A. You heard all kinds of things in there. As he said in his last paragraph, the thoughts and philosophies are expressed, so we're looking at a document of thoughts and philosophies.
Q. If you turn to page 7, in the second full paragraph, the second sentence.
A. On the same document?
Q. Yes, page 7.
A. Of thoughts and philosophies?
Q. No, on "A GAP IN PRESENT CIGARETTE PRODUCT LINES AND AN OPPORTUNITY TO MARKET A NEW TYPE OF PRODUCT." That document.
A. Which is the thoughts and philosophies.
Q. Well, it is the written statement of the research scientist at RJR, Claude Teague. That's what we're looking at.
A. No, but he said, Mr. Teague said these are his thoughts and philosophies. I thought it would be important to point that out.
Q. And without --
Well we knew that Mr. Senkus was the director of research --
A. Right.

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Q. -- at RJR, so he was providing his --
A. Thought and philosophies.
Q. -- thoughts and philosophies as a R&D scientist to his superior; correct?
MS. McDOLE: The first "he" being Mr. Teague.
Q. Mr. Teague was providing that in writing to his superior, Mr. Senkus; correct?
A. I don't know. Was that his superior?
Q. Yes.
A. I didn't have an org chart in '72 so --
Q. On page 7 Mr. Teague says, in the second paragraph, second sentence, "Given a cigarette that delivers less nicotine than he desires, the smoker will subconsciously adjust his puff volume and frequency, and smoking frequency, so as to obtain and maintain his per hour and per day requirement for nicotine (or more likely will change to a brand delivering his desired per cigarette level of nicotine)." Do you see that?
A. (Nodding.)
Q. Again, is that a concept that you were familiar with while you were CEO of the company?
A. No.
Q. And "the company" now, I mean RJR Nabisco but it

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includes RJR Tobacco as part of the company; correct?
A. Yep.
Q. And in the two sentences after that he says, "...regardless of which cigarette the smoker chooses, in obtaining his daily nicotine requirement he will receive about the same daily amount of tar." You see that?
A. (Nodding.)
Q. Again did you under --
And he goes on then to say at the very bottom of the page, "If, as claimed by some antitobacco critics, the alleged health hazard of smoking is directly related to the amount of 'tar' to which the smoker is exposed per day, and the smoker bases his consumption on nicotine, then a present 'low tar, low nicotine' cigarette offers zero advantage to the smoker over a 'regular' filter cigarette, but simply costs him more money and exposes him to substantially increased amounts of allegedly harmful gas phase components in obtaining his desired daily amount of nicotine." Do you see that?
A. Yes.
Q. Did you have an understanding, while you were CEO, that because of smoker compensation there was no advantage to the low-tar cigarettes that were being

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

marketed by RJR Tobacco?

A. No.

Q. You didn't have that understanding?

A. No.

Q. Had anyone ever discussed that with you?

A. No.

Q. Had you ever asked anyone that question?

A. No.

Q. So you simply didn't have an opinion one way or the other.

A. (Shaking head.)

Q. Do you recall at any time RJR doing any advertising in which it informed low-tar smokers that there was no benefit, reduced tar benefit to smoking a low-tar cigarette?

A. No.

MS. McDOLE: Objection to the foundation.

Q. You recall no such advertisement or --

A. No.

Q. -- labeling?

A. No.

Q. Instead, didn't the advertisements for low-tar cigarettes attempt to sort of reassure smokers that they could continue smoking and reduce their chances of disease related to tar by getting less tar in

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these --

A. I never saw an ad like that.

MS. McDOLE: Objection to the form of the question, particularly the "sort of" in form.

Q. The purpose, however, of the low-tar cigarettes was to have smokers believe that they were obtaining less tar when they smoked; correct?

MS. McDOLE: Objection to the form.

A. Well I think if you had a low-tar cigarette and you advertised it as such, you said it has less tar.

Q. And if --

A. I don't think that's a -- a big breakthrough.

Q. And if in fact the scientific fact of compensation that's been addressed in these memos we've looked at really existed, that is, that there was no tar-reduction benefit, then the failure to mention that to the consuming public would be a misstatement or untruthful by RJR.

A. How do we know?

MS. McDOLE: Objection to the assumption.

THE REPORTER: What was your answer, sir?

MR. BRANCH: "How do we know?"

Q. If your research scientists had in fact established that that was the case --

A. Did they?

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Q. Well I'm asking you if they --
A. Not to my knowledge.
Q. Well to your knowledge they didn't, --
A. No.
Q. -- but if they did without you knowing about it, the failure to communicate that to your consumers was untruthful; correct?
MS. McDOLE: Objection to the form.
A. I can't answer that.
Q. Pardon?
A. I can't answer that.
Q. You don't --
You can't answer if -- if that was a true statement that the low-tar cigarettes actually did not deliver less tar because of smoker compensation, that it would have been --
A. It's such a hypothetical question. I mean, there is no answer to that.
Q. You can't answer it.
A. I can't answer that at all.
Q. If the low-tar cigarettes stated that they delivered a certain amount of tar when in fact they delivered more tar than that, and RJR knew that, that's the assumption.
MS. McDOLE: Objection to the form of the

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question.
A. If, if, if, if. I mean, how can I answer that?
Q. Well if you can't --
A. I can't answer it.
Q. you just tell me you can't if you can't, but I'm saying --
MR. BRANCH: He said it several times already.
A. I mean, you can't, if this happened and this and this and this, did this happen? I mean, how in the hell --
Q. Well we've just seen --
A. Are you saying that this did happen?
Q. We've just seen some memos by your research scientists that said it did.
MS. McDOLE: Objection to that assumption.
MR. BRANCH: Philosophies.
MS. McDOLE: Objection to the statement. It's not true.
Q. Do you have reason to doubt the statements that were made by --
A. I have no reason to believe them or not believe them.
Q. And based on that not -- not having a belief one way or the other I am saying to you, if those

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statements are true that smoker compensation, as they describe it, meant that low-tar cigarette smokers didn't receive less tar, the failure to state that by RJR would be untruthful to consumers; correct?

MS. McDOLE: Objection.

A. I think you should prove that those weren't true.

(Interruption by the reporter.)

A. Is there absolute proof that these aren't true or true?

Q. So the fact that they are contained in RJR Tobacco documents is not proof to you in any way that --

A. Absolutely not.

Q. Were, in your experience as CEO, your research and development people prone to writing memos with things that weren't true in them?

A. Are there memos that are written? I'm not saying research and development. And when people are talking about philosophies and facts, they may believe it's right, they may -- but what they believe may not be right. Opinions.

THE REPORTER: We have to go off the record and change tape.

(Recess taken from 11:26 to 11:38 a.m.)

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BY MR. FINZEN:

Q. Mr. Johnson, would you agree generally that when someone is addicted to a substance, it prevents that person from exercising free choice regarding the continued use of that substance?

MS. McDOLE: Objection to the form.

A. No.

Q. You would not agree with that?

A. No.

Q. Would you agree that because nicotine is addictive, that people who are addicted to nicotine in cigarettes don't continue to smoke as a matter of free choice?

MS. McDOLE: Objection to the form.

A. I can't answer that. They can decide either to smoke or not smoke.

Q. Well would you at least agree that people who are addicted to nicotine have their freedom to choose severely compromised by that addiction?

MS. McDOLE: Objection to the form.

A. I can't answer that.

Q. In your experience, quitting smoking is harder for some people than for others. Isn't that true?

A. It's probably true, but I have no scientific base for it.

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Q. Haven't you known people, however, in your experience who've tried to quit several times and haven't been able to?

MS. McDOLE: Objection to the form.

A. There are people who've tried to quit and have not quit.

Q. And have not quit. And there are others who tried to quit several times before they were finally able to quit. You're aware of that.

A. Obviously.

Q. And your friend who had the heart attack when -- that precipitated your decision to quit, had he ever tried to quit, do you know?

A. Not to my knowledge.

Q. Are you aware of -- of people who have had medical problems like cancer or heart attack who were smokers and continued to smoke after having the heart attack or after having cancer?

A. Yes.

Q. And it's been your experience as well that generally when people smoke cigarettes for the first time ever in their life that it's hard to tolerate cigarette smoke on the first time you smoke?

MS. McDOLE: Objection to the form.

A. No.

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Q. Do you know of people who were around you at the time that you began smoking who -- some of whom also tried smoking and didn't like it?

A. Oh, yes.

Q. You knew people who tried smoking and actually got physically ill from it the first few times they tried it?

A. I don't recall that.

Q. We were talking earlier, you were talking earlier, asking me about well how do you -- how are you defining addiction. Let me ask you if you would, please, take a look at a document that's previously been marked as Plaintiffs' Exhibit 2451 in this litigation.

A. This is the definition, the whole thing?

Q. No, no. I'll point you to it.

For the record, this is a document that bears the caption of the case and is entitled "EXPERT REPORT OF RICHARD D. HURT, M.D., CONFIDENTIAL - SUBJECT TO MINNESOTA PROTECTIVE ORDER AND ADDENDUM/CATEGORY I," previously marked as Plaintiffs' Exhibit -- or as, I'm sorry, Defendants' Exhibit 2451. And I would ask you to turn to page 8. At the bottom of page 8 where he references the American Psychiatric Association's Diagnostic and

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Statistical Manual. Do you see that?

A. Yes.

Q. Would you please take time to read from there over to the bottom of page 10, sir.

A. How far do you want me to read?

Q. To the bottom of page 10.

A. Oh, I've done that.

Q. You've been there? Okay.

Looking at the American Psychiatric DSM-IV criteria for the definition of substance dependence, do you agree that these criteria meet your definition of nicotine as addictive that you used when you referenced it as being addictive?

A. No. I had no idea of the depth that they're talking about here.

Q. Well looking at page 9 in terms of the three -- of the criteria, three or more of which establish for the DSM-IV criteria a finding of dependence, the first one being tolerance, and the definition of the bullet points expanded at the bottom of page 9 and onto 10 says, with regard to tolerance, that a naive smoker initially smokes a cigarette, it produces nausea, lightheadedness and other symptoms which diminish with continued smoking, i.e., tolerance. That's something that you understand to be true when

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linked with cigarette smoking, don't you?

A. I personally don't, but it --

Q. But it was something that was understood inside RJR Tobacco, isn't it?

A. I have no idea what they understood.

(Interruption by the reporter.)

MS. McDOLE: Objection to the form. He's speaking for himself.

Q. And I'm asking him now: That was known inside of RJR Tobacco, wasn't it?

A. Not to my knowledge. It may have been.

Q. You still should have in front of you there Exhibit 1057 we looked at earlier.

A. Exhibit ten fifty -- 1087.

Q. No, 1057?

A. Eighty-five, fifty-seven.

Q. You have it there?

A. Oh, yeah.

Q. Okay. Turn if you would, please, to page 4, Bates stamp page number 50 --

A. The 1972 document.

Q. Yes, that's correct.

A. Back to '72.

Q. Correct.

A. What page?

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Q. Bates numbered 500915686.
A. 86, got it.
Q. Top of the page, says page 4.
Going to the bottom of that page and then over to the top of the next page Mr. Teague says, "Only after experiencing smoking for some period of time do the physiological 'satisfactions' and habituation become apparent and needed. Indeed, the first smoking experiences are often unpleasant until a tolerance for nicotine has been developed." Do you see that?
A. Yes.
Q. Mr. Teague in the R&D department in 1972 understood that nicotine and smoking did require tolerance.
A. "Smoking," he said.
Q. Right. And he's referencing --
A. You can't have one without the other.
Q. Right. That's right. And at least in the R&D department in 1972 they understood the concept of tolerance being involved in cigarette smoking; correct?
MS. McDOLE: Objection, this document --
(Interruption by the reporter.)
MS. McDOLE: This is a document written by

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/gzhd0001

Dr. Teague. Your question related to the entire R&D department.

Q. Okay. You can answer.

MS. McDOLE: In 1972.

MR. FINZEN: Right.

Q. I'll restate the question.

At least in the R&D department in 1972, they understood the concept of tolerance being involved in cigarette smoking; correct?

MS. McDOLE: Objection to the form.

A. 1972 is what they said here.

Q. Correct.

A. They didn't use the word "tolerance."

Q. Well he does on the top of page 5. He says, "until a tolerance for nicotine has been developed," smoking --

A. "Tolerance for nicotine," right. Okay.

Q. "Smoking experiences are...unpleasant." You see that?

A. Yeah.

Q. And the DSM-IV definition says, the first bullet point of the criteria, one of which is tolerance, defined as when the smoker begins to smoke it produces these unpleasant --

A. He just never defined what he meant by

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tolerance.
Q. Well he describes it pretty well as being the first smoking experience as being unpleasant; correct?
A. Yeah.
Q. And in the DSM under tolerance the definition Dr. Hurts says when a naive smoker initially smokes it produces nausea, light-headedness and other symptoms which are unpleasant; correct?
MS. McDOLE: Are you saying that this is what the DSM says, this last bullet on page 9?
MR. FINZEN: No, I'm saying -- I said Dr. Hurt.
MS. McDOLE: This is what your expert -- That's what your expert said.
MR. FINZEN: Right, yeah.
MS. McDOLE: All right. Object to the form of the question.
A. So this doctor says something and this doctor says something.
Q. And they seem to agree, don't they, sir?
MS. McDOLE: Objection to the form.
A. I can't make that -- I can't give you an opinion on that.
Q. The second bullet point is "withdrawal," and

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what the bullet point going over on page 10, what Dr. Hurts says with regard to withdrawal is that the majority of smokers who try to stop experience some nicotine withdrawal which is manifested by psychological and/or physiological changes, and then he lists some of them, irritability, frustration or anger, anxiety, difficulty concentrating, insomnia, dysphoria, depressed mood, restlessness are symptoms that are frequently seen. Do you see that?

A. Umm-hmm. Yes.

Q. When you quit smoking, you experienced some of those --

A. Yeah.

Q. -- withdrawal symptoms, didn't you?

A. You get a little dingy for a couple of weeks.

(Interruption by the reporter.)

Q. Yeah, I think you --

A. Well it's a habit that all of a sudden when you had something you did for 40 years and you're not doing it anymore, the whole smoking experience is far more than just -- it's all the tactile, all the other dimensions in there --

Q. Specific --

A. -- but, you know, 65 percent of America used to smoke and now it's down under 30 so --

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Q. Specifically you said that you were ding -- quote, dingy for awhile and that you didn't focus as well. That's the same as saying you had some difficulty concentrating; right?

A. A little bit, yeah.

Q. And a little bit restless?

A. No.

Q. And over time, the longer you went from the day of quitting on, those symptoms subsided for you, didn't they?

A. A couple of weeks.

Q. A couple of weeks.

The third bullet point, substances taken in larger amounts over a longer period of time than intended, is that a fact that you're familiar with that as people smoke over time they tend to increase the amount they smoke from the -- from the amount when they first start over time the amount of smoking increases?

MS. McDOLE: Objection to the form of the question.

A. I mean, how much time? You mean from the first week to the hundredth week? I don't know what they're talking about here.

Q. That was -- That was --

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A. Sometimes it goes down I would imagine, too.
Q. At least for beginning smokers, youthful smokers, when they begin, their volume increases over time; isn't that correct?
A. Is that true?
Q. I'm asking you. Do you --
A. I don't know.
Q. Are you aware that -- that that was something that was known within the marketing area of RJR Tobacco?
MS. McDOLE: Objection to the form.
A. No.
Q. Let me show you a document that's previously been marked in this litigation as Plaintiffs' Exhibit 1031. This is a document labeled "RJR SECRET NO. 386 STRATEGIC RESEARCH REPORT" from Diane Burrows to several people, Mr. G. H. Long, Mr. M. L. Orlowsky, Mr. H. J. Lees, and then a long list of copies, and it bears Bates stamp numbers 501928462 through 84, --
A. Couldn't have been very secret, could it?
Q. -- I'm sorry, 8550. Well only if your definition of "secret" is something you tell only one person, I guess, but --
A. Three people know, it's no longer a secret.
Q. This is a document dated February 29, 1984

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

entitled "YOUNGER ADULT SMOKERS: STRATEGIES AND OPPORTUNITIES."

Have you ever seen this document before?

A. No, I haven't.

Q. Do you know who Diane Burrows is?

A. I recognize the name but I -- somebody that worked in the marketing I'm sure.

Q. The other people on the "to" list and the copy list, just as you go through those could you tell me any that you recognize?

A. Yeah, Mr. Long.

Q. How do you know him or what do you know his position?

A. Well when I was there he was the -- he was the head of tobacco sales.

Q. Okay.

A. But then retired while I was there.

Q. Okay. Any others you recognize?

A. Orlowsky looks familiar, but I -- I can't define what function. But the name -- I've seen the name. He's either in the manufacturing or in the marketing. Lees, Lees, yeah -- Might know Lees. No.

Q. And the stamp at the top, "RJR SECRET," that -- that really indicated this was intended to be kept within the company, correct, not disclosed?

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A. Yeah, certainly the company but --
Q. Not disclosed outside.
A. But it didn't look very secret.
Q. Not to be disclosed outside the company; correct?
A. I don't know.
Q. Let me ask you if you would, please, to turn to page 4, it says page 4 at the bottom of the page.
(Telephone interruption.)
(Discussion off the stenographic record.)
Q. Are you there? It's got Bates number 8473.
A. Yeah, yeah.
Q. At the -- Under paragraph D there, "LONG-TERM DIVIDENDS -- RATE PER DAY," it says "Government and RJR studies spanning several decades have shown that smokers increase their consumption as they age." You see that?
A. Umm-hmm.
Q. The chart below --
A. Yes.
Q. -- shows that smokers 25 plus consume 22 percent more than smokers 18 to 24 on average during this time period. You see that?
MS. McDOLE: Well it says during 1980 dash 82.

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Q. Well during the time period that's mentioned here, yes.
A. 30, then they go up to 34, then they go back down to 50; right?
(Interruption by the reporter.)
A. In other words, here 26 cigarettes, 30 cigarettes, 34, then back down to 31.
Q. Yes, and then the next column shows the percent increase that that is over the 18 to 24. Even at 31.2 it's a 19 percent increase over what smokers at 18 to 24 smoked; correct?
A. Yeah. A little under five cigarettes a day more.
Q. And this Burrows report says that that was a subject of both government and RJR studies and it spanned several decades showing that; correct?
A. That's what it says.
Q. So at least inside RJR it was known that cigarettes were often taken in larger amounts over -- over time; correct?
MS. McDOLE: Objection to the form. That's not what the document says.
Q. Can you answer the question, sir?
A. The document says what the document says.
Q. Okay.

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A. It goes up and then it goes down.
Q. So the Teague document showed knowledge, at least by Mr. Teague in the research and development part -- department in 1972, of the phenomenon of tolerance, and the Burrows document shows knowledge of the phenomenon of increased usage over time. If you add that with withdrawal we've got three of the symptoms in the DSM-IV, don't we, sir?
MS. McDOLE: Objection to the summation, objection because -- because those things haven't been established. They're your opinions.
A. I'd hate to bet my money on that conclusion.
(Interruption by the reporter.)
Q. You don't agree that this is --
A. The numbers are the numbers. I'd like to -- I'd like to get more than an average in there, but that's fine. The numbers are the numbers.
Q. The -- The fourth bullet point, "persistent desire or unsuccessful efforts to cut down," I think you testified earlier you've been aware of people who you've known who tried to quit and couldn't.
A. I think the whole world knows about that.
Q. Okay. The fifth bullet point, a great deal of time spent on activities necessary to obtain the substance. Being originally from Canada and going

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back there from time to time, being in the north country in the wintertime in areas where the buildings are smoke-free, have you seen people standing outside smoking in below zero, bitter cold weather?

A. Sure.

Q. And they do that because they can't smoke in the building; right?

A. I would think that would be the best reason.

Q. And have you seen people standing outside in -- in the rain smoking outside of buildings?

A. In the rain, with the rain pelting on them? No, I haven't seen that. They usually have shelter.

Q. And would you agree that they do that in order to obtain the satisfaction that they derive from smoking cigarettes?

MS. McDOLE: Objection. They do what? Objection to the form.

Q. Stand out in bitter cold weather.

A. Well they'll stand out in good weather. They are not allowed to smoke inside, so if they want to smoke they go to places where they can smoke.

Q. And the last bullet point refers to substance use continued despite knowledge of --

(Interruption by the reporter.)

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Q. And the last bullet point refers to "the substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to be caused or exacerbated by the substance." As you testified earlier, I think you said that you were aware of people who had heart attacks and continued to smoke afterwards; --

MS. McDOLE: Objection, mischaracterization.

Q. -- correct?

A. I'm aware of that, yes.

Q. And some of those people at least have expressed to you a desire they wish they could quit; is that correct?

MS. McDOLE: Objection to the form.

A. No, I've never had that.

Q. No one's ever done that?

A. No.

Q. People who --

A. They say they're going to.

Q. But they don't.

A. Some do, some don't. More do than don't.

Q. In balance, looking at these DSM bullet points, having gone through them now, do they assist in any

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way in terms of what you meant when you used the word "addictive" in reference to nicotine?

A. I used addictive just like I would use it with coffee or with Coca-Cola, is that it has an attraction.

Q. While you were at -- at RJR Nabisco, were you familiar with the Cigarette Advertising Code?

A. No, not personally.

Q. Have you ever seen the Cigarette Advertising Code?

A. No.

Q. Were you aware that there was a Cigarette Advertising Code?

A. No.

Q. Let me show you what's been previously marked in this litigation as Plaintiffs' Exhibit 1024. This is a document that bears --

A. Document from where?

Q. Pardon?

A. Document prepared by who?

Q. Well I'm -- Let me identify it for the record.

It is seems to be the Cigarette Advertising Code bearing Bates numbers MNAT 00608606 through MNAT 0068 -- I'm sorry, start again, MNAT 00608614 and has written at the top, "Approved - April 27, 1964,

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

Meyner contract dated - July 8, 1964, Effective date - January 1, 1965." Do you see that on the first page?

A. Who -- Who created it?

MR. BRANCH: (Indicating.)

Q. Have you ever seen this before?

A. No.

Q. The -- Were you aware that the -- the tobacco industry got together and devised a voluntary code for cigarette advertising?

A. No, I didn't realize that.

Q. That was never something that was called to your attention when you were the CEO of RJR Nabisco?

A. No.

Q. Were you aware that there were restrictions that RJR had on advertising in any way of its cigarette products that it had taken on internally?

A. No, we did it -- We did a review, in other words, we had review of advertising and then of course you had the oversight of the FTC.

Q. Were you aware that as page 4, under Article IV, Advertising Standards of this document, that there were prohibitions on advertising to individuals under the age of 21?

A. No.

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

Q. Not something that you were ever made aware of.
A. No.
Q. Were you aware that publicly RJR had always taken the position that it would, notwithstanding what's stated in the Cigarette Advertising Code, advertise to people who were 18 and older?
MS. McDOLE: Objection to the form.
A. That RJR publicly --
Q. Said that it -- that it directed its advertising --
A. Have you got a copy of that?
Q. Well I'm asking whether you were aware that they --
A. No.
Q. -- intended their advertising to reach 18 and older age group.
A. Yeah -- Yes, it was to be focused above 18.
Q. That you did know?
A. Yeah.
Q. And what was the source of that knowledge?
A. They advised me, we discussed it. It was part of the regulations I guess, part of the code.
Q. And did you understand that if that was the -- if that was the goal that it was very difficult to cut it that precisely and that if you were going to

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direct an ad to someone who was 18, you were likely to influence people younger than 18 with that same advertising?

MS. McDOLE: Objection to the form of the question.

A. Well they could be exposed to it.

Q. And if they were exposed to it and it was something that appealed as an advertising appeal to an 18 year old, it would likely appeal to someone under 18 if they were exposed to it.

A. It may.

Q. In fact, were you aware that RJR routinely tracked and researched the smoking habits of youthful smokers ages 14 to 17?

MS. McDOLE: Objection to the form.

A. No.

Q. And that they had done so for many years?

A. No.

Q. No one ever brought that to your attention?

A. No. The market was from 18 and up.

Q. Would you be surprised to find out that the company did monitor the smoking of 14 to 17 year olds?

MS. McDOLE: Objection to the form.

A. I was unaware of it.

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

Q. Let me show you a document that's previously been marked in this litigation Plaintiffs' Exhibit 1025.

A. That's why.

Q. This is a document that bears the heading "WILLIAM ESTY COMPANY INCORPORATED ADVERTISING, DATED DECEMBER 9, 1959, YOUTH RESEARCH INSTITUTE, 1959 CIGARETTE SMOKING STUDY AMONG HIGH SCHOOL AND COLLEGE STUDENTS," and it bears Bates numbers 5011037 -- I'm sorry, 1113723 through 3730. And it is a -- the first page is a letter from a George McGovern to a Mr. W. A. Sugg at R.J. Reynolds Tobacco Company with the stated study attached.

Have you ever seen this document before?

A. No, I haven't.

Q. This attachment, which is the Youth Research Institute study regarding smoking among high school and college students in 80 cities throughout the United States in October and November of 1959, on Table 1 which is the second page of the report, shows the percentage in each group of respondents who smoked in both 1958 and 1959 for high school total, as well as freshman, sophomore, junior and senior classes; correct?

A. Umm-hmm. Yes.

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Q. And this being a study of high school and college students in the United States, generally high school age freshman are 14 and 15 years old; correct?
A. If you say so.
Q. And by the time they are seniors they're 17 and 18 years old; correct?
A. If you say so.
Q. And it shows that of the -- of the groups in those various ages what percentage of the respondents, there being nearly 2000 respondents -- I'm sorry, there being more than 2000 respondents, 2701 high school students in '59, and 3052 in 1958, it shows the percent of each age, men and women, in the freshman and sophomore and the senior and junior classes that smoked; correct? Is that correct that that's what it shows?
MS. McDOLE: Objection to the --
A. It's a statistical layout. You're going bang, bang, bang. I can't follow that that's there or not.
Q. Does this surprise you in any way that RJR Tobacco was keeping track of the smoking of 14 to 17 year olds?
A. I can't -- I can't be surprised because it was in 1959. Maybe this was standard practice in those days.

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Q. Does it offend you in any way to think that the company that you once headed at any time --

A. I have no opinion.

Q. You have no opinion one way or the other?

A. (Shaking head.) I don't know what the circumstances were.

Q. Let me show you now a document that's been previously marked in this litigation as Plaintiffs' Exhibit 1026. This is a document dated July 9, 1980 to a Mr. Uziel or Uziel Frydman, F-R-Y-D-M-A-N, from Kay Duffy with cc's to Mr. J. R. Moore and Mr. S. R. Perry. It's titled "TEENAGE SMOKERS (14-17) AND NEW ADULT SMOKERS AND QUITTERS," and it bears Bates numbers 501254289 through 4301.

Have you ever seen this document before?

A. No.

Q. Are you aware of any of the individuals whose names appear on here, --

A. No.

Q. -- Mr. Frydman, Ms. Duffy?

A. No.

Q. Or Messrs. Moore or Perry?

A. No.

Q. Now this is a 1980 document that also purports to list information concerning the smoking habits and

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

consumption of 14 to 17 year old age group; correct?
A. That's right.
Q. And it -- it notes many things about that age group including, if you look under number 1, summary of key findings, smoking among the 14 to 17 age group that, quote, RJR is continuing to lose share among teenage smokers with 19.9 percent of the teenage smokers in the fall of '79 versus 21.3 in the spring of '79. Do you see that?
A. Yes.
Q. And the next bullet point below that, the beginning sentence says, "P. Morris continues to gain share among the 14-17 year old age group, with 62.6% in the Fall 1979 versus 58.8% in the Spring 1979." You see that?
A. Yes.
Q. Were you aware that the share of market among the 14 to 17 year -- year old age group is something that RJR marketing regularly kept track of?
A. No.
MS. McDOLE: Objection to the form.
Q. Were you aware of that at any time while you were CEO of the company?
A. No.
Q. Does it offend you in any way to see that the

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company was tracking the smoking brand preference of 14 to 17 year olds?

A. Does it offend me?

Q. Yes.

A. I have no opinion.

Q. You have no opinion one way or the other?

A. No. (Shaking head.)

Q. Based upon your experience over the years in -- in various consumer product companies, can you think of any reason other than for marketing that you would keep track of brand use and preference among your customers?

A. Just for information.

Q. Can you think of any use that would be made of that information if it wasn't for marketing purposes?

A. (Shaking head.) Not for marketing purposes, it just tells you your share's going down.

Q. And generally isn't that kind of share information something that's used in developing marketing plans?

MS. McDOLE: Objection to the form.

A. It's information.

Q. It's used for nothing?

A. I don't know. Was there a marketing plan that came out of that?

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

Q. Well I'm asking whether --
A. Well I don't know --
Q. -- in your experience --
A. -- of any, no.
Q. Isn't it --
Isn't it a fact that the reason that RJR was obtaining this information is because the company knew that the majority of smokers begin smoking before the age of 18?
A. I have no idea.
Q. No one has ever brought that to your attention?
A. It's historical information. I don't know what they do with it.
Q. Let me show you what's been -- a document previously marked in this exhibit or this litigation as Plaintiffs' Exhibit 1030. It is a memorandum from D. W. Tredennick, T-R-E-D-E-N-N-I-C-K, marketing research department, to Mr. F. H. Christopher, Jr dated July 3, 1974, and it bears Bates numbers 501221308 through 1317.
Have you ever seen this document before?
A. No, I haven't.
Q. The first page of this --
Do you know Mr. Christopher, by the way?
A. Yes.

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/gzhd0001

Q. And who is he?
A. Well I don't know what he did then. I have no answer.
Q. What was he when you knew him?
A. He was in manufacturing.
Q. Okay. Did you know Mr. Tredennick?
A. No.
Q. But at the time his title he was in the marketing research department, that's what this memo says?
A. That's what the memo says.
Q. On the first page of this, under "STARTING AGE," the second heading there, underlined heading it says, "Over 50% of men smokers start smoking fairly regularly before the age of 18 and virtually all start by the age of 25." Do you see that?
A. Are you shocked that the government produced this information?
Q. I'm not shocked at it, no. Are you?
A. No, I just -- You keep wondering if I'm shocked.
Q. No, I'm not shocked at all.
A. They're doing their research.
Q. And it shows then in the chart that the 17 and under age started smoking for men it was 54 percent, with the median age being age 17. Do you see that?

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/gzhd0001

A. Umm-hmm.
Q. Is that information that -- that you ever had while you were CEO of the company?
A. No.
Q. Had anyone ever discussed with you the median starting age of smokers?
A. No. You're just aware that although we -- our -- our mandate is we could only sell at 18 or advertise it, anybody's got that ability to do that, but obviously if you have any eyeballs in your head or have any common sense, you know people are starting smoking at a much earlier age, or drinking beer or smoking marijuana.
Q. And did you -- did you agree, as the CEO of the company, with the philosophy that you -- you should not be marketing or selling to people under 18?
A. Absolutely.
Q. If you turn over to page 5 of Mr. Tredennick's memorandum, under -- at the top it says "REASONS FOR SELECTING A FIRST 'USUAL' BRAND."
A. "INITIAL BRAND SELECTION." Is that it?
Q. No, it says "REASONS FOR SELECTING A FIRST 'USUAL' BRAND," at the top it should be page 5, under Mr. Christopher's name. The next page I think.

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A. Oh, here we are. Page 4. Here we go. "Reasons for selecting a first" --

Q. Right. You there?

A. Umm-hmm.

Q. Second paragraph that starts "broadly speaking," the -- he says, "Broadly speaking, we hypothesize that the causes of initial brand selection relate directly to the reasons a young person smokes. The more closely a brand meets the psychological, quote, support, closed quote, needs, parens, advertising or otherwise communicated brand or user image, closed parens, and the physiological needs, parens, product characteristics, close parens, the more likely it is that a given brand will be selected." You see that?

A. Does anybody understand that crap?

Q. That has no meaning?

A. Can anybody here interpret that marketingease there?

Q. That has no meaning to you?

A. Absolutely blather.

MS. McDOLE: I'm going to register a general objection to showing this witness so many documents that were either before or after his time. I don't see what the relevance of any of this is.

MR. FINZEN: These are RJR company

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

documents, that's what the relevance of it is.

MS. McDOLE: I don't think they're relevant to this witness.

THE WITNESS: Back to '74, we'd need how many car loads?

Q. Do you understand that advertising communication is a factor in brand selection?

A. It can be.

Q. And that was something that you knew when you were the CEO in 1987 and 1988?

A. Yeah. I hope I did. We hypothesize. How do you comment on it?

(Discussion off the stenographic record.)

MR. FINZEN: Do you want to go off the record a minute?

(Discussion off the stenographic record.)

(Luncheon recess taken at approximately 12:27 p.m.)

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AFTERNOON SESSION

(Deposition reconvened at approximately 1:05 p.m.)

(Discussion off the stenographic record.)

BY MR. FINZEN:

Q. Mr. Johnson, I'd like you now to take a look at a document you've already looked at earlier, Plaintiffs' Exhibit 1031 we previously looked at this morning. Do you have that?

A. Yep.

Q. This is a February 29th, 1984 Diane Burrows strategic research report on young adult smokers, strategies and opportunities.

A. Umm-hmm.

Q. Turning if you would, please, to the management summary page which is like the fourth page of the document, it's got a little Roman numeral I.

A. Where's that?

Q. Fourth page.

A. Oh, fourth page.

Q. Yeah.

(Discussion off the stenographic record.)

Q. That's it. It says -- No, that's the one. It's the fourth page but it's little Roman numeral I at the bottom of the page.

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

A. Oh, Roman, there. Okay.
Q. The second heading here, "THE IMPORTANCE OF YOUNGER ADULT SMOKERS," there are two bullet points. Do you see those?
A. Yes.
Q. The first one of which says "The renewal of the market stems almost entirely from 18-year-old smokers." Do you see that?
A. Yes.
Q. This is a 1984 document. Is that -- Is that something that you were aware of as CEO in 1987 from your meetings with the tobacco marketing people that -- that that was a true statement that the renewal of the market stems from 18-year-old smokers?
MS. McDOLE: Objection to the form.
A. I can't remember it. It seems logical.
Q. She goes on below the bullet point to say, "Thus, the annual influx of 18-year-old smokers provides an effort less momentum to successful 'first brands'." You see that?
A. Yes.
Q. Again is that something that you were aware of as a true fact about the RJR Tobacco business, that the influx of 18-year-old smokers did provide an effortless momentum for first-brand success?

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MS. McDOLE: Objection to the form.

A. I'm not aware of it. It seems like a logical statement.

Q. And she says below that that brands slash companies which fail to attract their fair share of younger adult smokers face an uphill battle. Marlboro and Newport, the only true younger adult growth brands in the market, have no need for switching gains. All of their volume growth can be traced to younger adult smokers and the movement in the 18-years-olds which have previously -- which they have previously attracted into older age brackets, where they play a -- pay a consumption dividend up to 30 percent." You see that?

A. Yes.

Q. And that's the thing we looked at a little earlier in this document that the statistics show that consumption increases over time; correct?

MS. McDOLE: Objection to the mischaracterization.

Q. That's what she's referring to there?

MS. McDOLE: Objection to the mischaracterization.

A. Well what you're looking at is a table that shows consumption goes -- per cigarette in age group

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goes up.
Q. And it's --
A. If that's right.
Q. Well is that something that you knew to be true when you were the CEO?
A. No, I didn't. Not specifically.
Q. Then if you turn if you would to -- two more pages in to little Roman numeral III in the management summary, the box at the top of the page, there's a number 1. It says, "Younger adult smokers are critical to RJR's long-term performance and profitability. Therefore, RJR should make a substantial long-term commitment of manpower and money dedicated to younger adult smoker programs. An unusually strong commitment from Executive Management will be necessary, since major volume payoffs may lag several years behind the implementation of a successful younger adult smoker strategy." You see that?
A. Yes.
Q. Was there in place when you became CEO a younger adult smoker strategy that was being implemented by the tobacco side of the business?
A. Not per se.
Q. What do you mean when you say "not per se"?

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A. Well I mean you're looking at all segments of the market, you're looking at the young adult market, you're looking at the various segments that come up and you develop various strategies, some of which those strategies may apply to all segments.

Q. But was it known to you that the younger adult smokers were the only source of replacement smokers for the tobacco industry?

A. Not per se, but it was obviously a very important segment in the market.

Q. And -- And when you refer or, I'm sorry, when this report refers to 18-year-old smokers, based upon your knowledge and some of the documents we've seen here this morning, the majority of those people started smoking before 18, didn't they?

MS. McDOLE: Objection to the assumption.

A. Did they?

Q. That's what the documents we looked at earlier showed; isn't that correct?

MS. McDOLE: Objection to the mischaracterization.

A. All we know is in that segment which is the only segment you could work with, that that was a critical segment.

Q. And the government statistics showed that the

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majority of smokers who were smoking began smoking before 18, correct, for men?

MS. McDOLE: Objection to the form.

MR. BRANCH: You're asking now his recollection from the documents you showed him this morning.

MR. FINZEN: Yes.

A. Yes, that's what the studies say.

Q. And do you have any reason to doubt that that's true?

A. I have no reason to doubt that it is true or it's not true.

Q. And in fact isn't it true that the fact that they did start smoking, the majority, that is, before the age of 18 --

A. Did the majority start before they were 18?

MS. McDOLE: Objection to the misrepresentation.

Q. Again that's what the document shows.

A. No, the document didn't show that.

Q. We can look at it again.

A. That was the document that was published in what, 1980, '84.

Q. That's Plaintiffs' Exhibit 1030 if you can find it there.

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Source: http://www.industrydocuments.ucsf.edu/docs/gzhd0001

A. 1030. Right. Okay. Here we are.
Q. Dated July 3, 1974.
A. Yeah.
Q. And that showed that over 50 percent of men smokers started smoking regularly before the age of 18.
A. In 1974. Now we go from 1974, and here we are --
Q. To 1984.
A. -- in '84. Ridiculous.
Q. Do you have reason to doubt that the --
A. Yes.
Q. -- majority of smokers --
A. I have reason to give it serious doubt because you're comparing two entirely different time frames.
Q. While you were with the company in 1985, '86, '87, '88, did you have any information that would make that government report of 1974 inaccurate at that time period?
A. I have no idea. I haven't looked at it in either context, but how can you -- how can you make the great leap of faith from a 1974 government study based on two years and apply those statistics immediately to something in 1984? Unless you're a lawyer, you'd go broke.

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Q. Take a look at page 2 of this -- of this document now, 1031, the one that we're looking at in 1984. You've got number 2 at the bottom of the page?
A. Umm-hmm. Yes.
Q. Under "VOLUME," you see that? Number "1. VOLUME." Now we're talking about arabic number 2 in the actual report itself.
A. Oh, that 2.
MR. BRANCH: You got to turn over a few more pages.
A. Now where would I find that? Under section I? The importance of the younger adult smoker?
Q. Yeah, the second page.
A. Annual gains from the new market, volume.
Q. Number 1, volume.
A. Yeah.
Q. The first bullet point, "Less than one-third of smokers (31%) start after age 18." You see that?
A. Yeah.
Q. Only five percent after age 24.
A. Right.
Q. The statistics don't seem to have changed in 10 years, do they?
MS. McDOLE: Objection to the form.
A. I don't know. You'd have to work that back.

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Q. Do you have any reason to believe that -- that the majority of smokers began smoking at an age of 18 or older in 1984?

A. Well this is "majority of smokers." Majority of all smokers that are out there are under 18 is what you're saying?

Q. Majority of people who smoke started before the age of 18. Do you have any reason to doubt that that was true in 1984?

A. I have no idea.

Q. Let me show you now a document that's been previously marked in this litigation as Plaintiffs' Exhibit 1032. This is a document from R. C. Nordine to E. J. Fackelman dated April 13, 1984 and it bears Bates numbers 502033156 through 3157. Do you know who Mr. Nordine is?

A. No.

Q. Do you know who Mr. Fackelman is?

A. No.

Q. I will represent to you that they were people working at that time in the advertising and marketing areas of the company. Does that help in any way in identifying them to you?

A. No.

Q. This document the subject matter of which is

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strategies and segments, in the second paragraph, in the middle of that paragraph says, "It is relatively easy for a brand to retain 18-year-old smokers once it has attracted them." And then in the last sentence it says, there is a principle --

A. That's an assumption.

Q. "There is a principle of inertia: A smoker at rest tends to stay at rest." Do you see that?

A. I see it.

Q. Is -- Is that something that you understood while you were with the company --

A. No.

Q. -- to be true, that brand loyalty was a very important factor in share of market?

A. Well that's right, that's axiomatic.

Q. And --

A. Brand loyalty is very important to share of market.

Q. And did you understand that the brand -- brand loyalty among younger smokers was particularly strong? Did you understand that to be true?

MS. McDOLE: Objection to the form.

A. I don't understand it to be true. I mean, there's brand loyalty.

Q. And did you understand, however, that --

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A. I don't know really what "loyalty" means.
Q. That with regard to younger smokers that that loyalty to the brand was even stronger than with older smokers?
MS. McDOLE: Objection to the form.
A. Younger smokers buy the brands that satisfy them. If you want to call that loyalty, I've never heard it described as loyalty.
Q. If you look at the second page of this memorandum, after the two bullet points at the top of the page, that first paragraph says, "In a very real sense, the principle that is suggested by the Younger Adult Smoker Analysis is much broader and also applies to switching. It can be stated as: Attract a smoker at the earliest opportunity and let brand loyalty turn the smoker into a valuable asset." Do you see that?
A. Yeah.
Q. Is that a strategy that was employed by the marketing arm of the tobacco side of the business?
A. I have no idea. I doubt it. It's nonsense.
Q. You think that's nonsense?
A. Yes.
Q. Why do you think it's nonsense?
A. Because it's nonsense. I mean, it just doesn't

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say anything. It's babble. You get quite a bit of that in marketing reports.

Q. Were you aware that the marketing department was employing a first-brand strategy as a key strategic part of RJR Tobacco marketing in the 1980s?

A. "A first-brand strategy."

MS. McDOLE: Objection to the form.

A. What is a -- No, I don't even know what a first-brand strategy is.

Q. The first-brand strategy being to attract the smoker at the earliest possible age and then let brand loyalty turn that smoker into a valuable asset. You were unaware of that?

A. Absolutely.

Q. In dealing with the marketing side of the tobacco business over time, were you aware that there were specific programs targeted, marketing target -- programs targeted at the 14 to 24 year old age group?

MS. McDOLE: Objection to the mischaracterization.

A. No.

Q. Have you ever seen a document that suggested that the company was actively marketing its cigarettes to 14, 15, 16 and 17 year olds?

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A. Never.
Q. Would -- Would that be something that would surprise you?
A. Yes.
Q. Would it be of concern to you, if you were the CEO, if that kind of a program was going on?
A. Yes, it was illegal. I would be quite concerned.
Q. And it was illegal why?
A. You could -- You were not -- I understand is that you were not -- the -- your market started at 18, and you had a commitment to market from 18 and above.
Q. Let me show you a document that's previously been marked in this litigation as Plaintiffs' Exhibit 1035. This is a document the first page of which --
A. '74.
Q. -- in handwriting says, "Mr. C. A. Tucker, Presentation to RJRI B of D - 9/30/74, Marketing Plans," and it bears Bates numbers 501421310 through 1335. And then attached to that is the 1975 marketing plans presentation, Hilton Head, September 30, 1974.
Have you ever seen this document before?
A. No.

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Q. The first page of this document, under chart 1 it says that the paramount marketing objective in '75 and ensuing years is to reestablish RJR's share of its marketing growth in the domestic cigarette industry, and under chart 2, number 1 it says --

(Interruption by the reporter.)

Q. -- that one of the four key opportunity areas to accomplish that growth was in the increase of our young adult franchise. Do you see that?

A. Yep.

Q. And then under that it defines this young adult market as the 14 to 24 year old age group. Do you see that?

A. I see that.

Q. Chart number 3 says, "They represent tomorrow's cigarette business. As this 14 to 24 age group matures, they will account for a key share of the total cigarette volume." You see that?

A. Yes.

Q. It then, if you turn over to chart number 7, you see that?

A. Yes.

Q. It says, "Thus, our strategy becomes clear for our established brands: 1. Direct advertising appeal to the younger smokers while," and then it

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goes on talking about two others.

It's clear from the strategy here that there was to be a direct advertising appeal directed to the 14, 15, 16 and 17 year old smokers in 1975. Isn't that correct?

MS. McDOLE: Objection to the assumptions.

A. There was a recommendation.

Q. To the board of directors.

A. Yeah.

Q. In your experience sitting on lots of boards, people don't tend to make fanciful and foolish recommendations at that level, do they, sir?

A. Really?

(Laughter.)

A. That's a new paragraph in business.

Q. Your experience is that people do make --

A. Very fanciful and very --

Q. Very foolish?

A. Just look at the mergers and acquisitions world. Look at the number of CEOs that don't make it.

Q. Do you know who Mr. Tucker is?

A. Yes.

Q. Who is he?

A. He works -- He worked for Mr. Horrigan. I knew

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of him and he was -- he was an assistant to Mr. Horrigan.

Q. At some point he became vice-president in charge of marketing, did he not?

A. I don't know. Not when I was there he wasn't. In fact he retired. He was really a retainer to -- consultant to Mr. Horrigan.

Q. Well I will represent to you that we've had testimony in this case that at the 1974 time period Mr. Tucker was the vice-president in charge of marketing.

A. Good.

Q. Okay. Is it your experience that vice-presidents make foolish proposals --

A. Very, --

Q. -- to boards of directors?

A. -- very foolish.

Q. And fanciful?

A. Yes. And disastrous? Yes.

Q. And that the kinds of recommendations --

A. Not all, but many.

Q. And that the kinds of recommendations made by vice-presidents in charge of marketing with regard to marketing are not followed by boards of directors?

A. Not necessarily.

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Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/gzhd0001

Q. Usually?
A. Not usually I would --
Q. Less than usually.
MS. McDOLE: Objection to the form.
A. I can't tell. I mean, it depends. Depends how good the vice-president of marketing is, and how good the board is.
Q. Let me show you a document that's been previously marked as Plaintiffs' Exhibit 1036 in this case. It's entitled "R. J. REYNOLDS TOBACCO COMPANY DOMESTIC OPERATING GOALS," and it's -- bears the date of November 26, 1974, has Bates numbers 500796928 through 6934.
Is this a document that you've ever seen before?
A. No.
Q. And here on the first page under "MARKETING GOALS," the first bullet point say -- or before the first bullet point it says the primary goal in 1975 and ensuing years is to reestablish RJR's share of growth in the domestic cigarette industry. This will be done by the following, and the first bullet point says, increase our young adult franchise, 14 to 24 age group in 1960 was 21 of population and in 1975 will be 27 percent. You see that?
A. Yes.

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Q. And then about four bullet points down it says, "We will direct advertising appeal to this young adult group without alienating the brand's current franchise." You see that?

A. Yes.

Q. Now this is no longer a presentation, this is the domestic operating goals for the company. That's what it says; correct?

A. That's what it says.

Q. So it would appear that Mr. Tucker was successful at the board in getting his recommendation accepted?

A. We would hope so.

MS. McDOLE: Objection to the form.

A. Maybe it was the information.

Q. While you were with the company in the 1980s, were you aware that this kind of direct advertising appeal to the 14, 15, 16 and 17 year olds continued to be part of the marketing directive of the company?

MS. McDOLE: Objection to the form.

A. Well I don't know if it continued to be. It certainly wasn't the case when I was in charge of the business, and I don't know whether you're moving the goal posts here, which you probably are. In other

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words, was it illegal in that period of time to advertise to 14 to 24 year olds? I have no idea.

Q. Well we -- we started by looking at the advertising code which --

A. Was out in -- What year was that?

Q. We're going to find that again and look at it to get -- get that date correct. 1964. That was Plaintiffs' Exhibit 1024.

A. And did they say that -- I can't remember. I didn't read the code. Cigarette advertising directed primarily to persons under 21 years of age.

Q. So if this was the marketing plan in 1974 it would have been in violation of the Cigarette Advertising Code.

A. No, it wouldn't. No, it wouldn't. Come on now. I don't mind answering the questions, but don't mislead.

Q. How am I misleading?

A. Cigarette advertising should not appear on television or radio, in spot announcements, in school, college, university, --

(Interruption by the reporter.)

A. -- in comic books or comic supplements.

In other words, they're specifically saying I don't know whether it was illegal at that time. I

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mean I had no interest in it, but I would be very surprised if it was illegal and they were writing things down like this and they're going after 14, 24. Maybe the 18 came in between the time that, you know, you see the world differently in 1974 and in 1984, or in 1975.

Q. In each of those areas that you read in the advertising code, TV, radio programs, directed to persons under 21; correct?

A. Yeah.

Q. So if we're talking about 14 through 20, that would be in violation of the code; correct?

A. Well no, we will direct advertising to the young adult group, so obviously, without alienating the brand, I -- 25 and older categories we exceed our competitors.

All I'm saying is that I'm surprised to see it, but at that time it may have been legitimate and how --

Q. But we just looked at the ad --

A. Well are they governed at this time by something they wrote in 1964? I don't know.

Q. If they were, then it would have been illegal.

A. Yeah, I would --

MS. McDOLE: Objection to form.

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A. Well if it's illegal, it's illegal, that's all.
Q. If they were governed by that code, it would have been illegal; correct?
MS. McDOLE: Objection to the form.
A. They're not governed by the code, this code is the internal code. I'm talking about the federal code, the regulatory code. I don't know.
Q. Well certainly if that was an internal code that RJR would have agreed to be bound by you would expect that they would live up to it; correct?
A. Codes get changed, things get changed. I don't know.
Q. And therefore my question is if that code were the same in 1975 as it were written in 1964, the direct appeal to the 14 --
A. They have a conflict here.
Q. And that would make the --
A. I don't know if it's illegal though.
Q. Well it would be in violation of the code.
MS. McDOLE: Well objection to this entire line. It's way before his time with the company in any event.
A. That's the only thing I'd say. Maybe it's legit.
Q. But if the code of 1964 applied in 1975, --

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A. If it was still in effect.
Q. -- then it would be a violation.
MS. McDOLE: Objection -- Objection to the --
A. Unless they suspended it. It's an internal code; right?
(Interruption by the reporter.)
A. Anyhow, it would be interesting to know. I don't know if it was legal or illegal, for your next deposition.
Q. I show you now a document that's been previously marked in this litigation as Plaintiffs' Exhibit 1037. This is a document dated January 23, 1975 by Mr. J. F. Hind to Mr. C. A. Tucker, and it has Bates number 505775557. Have you seen this document before?
A. No.
Q. In this document Mr. Hind is telling Mr. Tucker in the first paragraph, in the middle of that paragraph, "To ensure increased and longer-term growth for CAMEL FILTER, the brand must increase its share penetration among the 14 to 24 age group which have a new set of more liberal values and which" represents tomorrow -- "represent tomorrows cigarette business." Do you see that?

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A. Yep.
Q. He then says in the next paragraph, "While 'Meet the Turk' is designed to shift the brand's age profile to the younger age group, this won't come over night. Patience, persistence, and consistency will be needed." You see that?
A. Yeah.
Q. Were you aware in the 1980s when you were with the company that that required patience, persistence and consistency to market to that group continued in the 1980s?
A. I have no idea.
MS. McDOLE: Objection to the form.
A. Marlboro was kicking the hell out of them.
Q. In that age group in particular; correct?
A. Everywhere. Everywhere.
Q. Now in 1988 when you were the chief executive the marketing strategy was still aimed, was it not, at attracting younger smokers to the brands?
A. No, you -- Would you define "younger smoker" for us?
Q. Yes. Those smokers --
A. So we don't confuse ourselves, in 1975.
Q. And I'm talking about that same group, the smokers --

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A. The 14?
Q. -- who were younger, starting to smoke before the age of 18.
A. Oh, the market segment was 18 to 24.
(Discussion off the stenographic record.)
(Plaintiffs' Exhibit 1605 marked for identification.)
BY MR. FINZEN:
Q. Mr. Johnson, I'm now showing you a document that's been marked Plaintiffs' Exhibit 1605. It is Bates stamped 508555904 through 5908. It has the typed name at the top "EXECUTIVE SUMMARY," and written in hand above that and to the right it says "Nordine To," it appears to be "JTW, 9/88." Do you see that?
A. Umm-hmm. Yes, I do.
Q. Again I think you've already said you weren't sure who Mr. Nordine was?
A. First time I've heard the name Nordine.
Q. Were --
A. Where's Nordine?
Q. In the upper right.
MR. BRANCH: (Indicating.)
A. Oh, that's Nordine. Okay.
Q. This document, I will also represent for the

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record, came with the -- from RJR with the 4A index date of September 1988 that corresponds with that in the upper right-hand corner. So this is a document that was created while you were the CEO of the company; correct?

MS. McDOLE: Objection to the form.

A. No. No.

Q. No?

A. How do I know?

Q. In September of 1988 you were not CEO?

A. Well is that September of '88?

Q. That's the date that was given to us by RJR.

MS. McDOLE: Well there's a date -- that's the only date that's on this document. I don't think there's been any statement by us.

A. When was it produced?

Q. It's on the 4A index September '88, it's written on the top September of '88.

A. If it's true, it's true, you know, but I mean did -- are you -- are you interpreting the fact that there isn't a date on that to this?

Q. The date is a handwritten date at the top.

MS. McDOLE: The basis for saying that it's an '88 document is that little note up there.

THE WITNESS: All right.

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A. So it's not necessarily an '88 document.
Q. Well it has the date of September of 1988 on it. That's all I can tell you.
A. It has that, yeah. It says "EXECUTIVE SUMMARY." Okay. So we don't know if it was during my time or not during my time.
Q. Well if it has the date of September of '88 on it --
A. Only if --
Q. Were you the CEO in September of 1988?
A. Yes, but was that document prepared in 1988?
Q. All I can tell you is that's what appears on there and that's the date that was given to us also by RJR when it was produced.
MS. McDOLE: Objection to the statement.
Q. The executive summary talks about this being -- the purpose of this report to describe the market dynamics that drive trends in brand performance and relate these dynamics to current marketing strategy. Okay. Do you see that?
A. Yep.
Q. So this report is about the current marketing strategy of the company; correct?
A. That's what it says.
Q. Now if you turn to the first page after the

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executive summary and go down to new quitters and smokers, the first paragraph there says, "Repeated government studies have shown that the only source of new smokers are younger adults. These studies indicate that 95% of all smokers begin smoking before they were 25. In addition, nearly 70% of current smokers started smoking before they were 18." Do you that?

MS. McDOLE: Misreading of the document.

A. Umm-hmm. Yes, I do.

MR. FINZEN: That was an objection?

MR. BRANCH: It's a tense problem I think.

MS. McDOLE: Right, and he got the title wrong too.

MR. FINZEN: Well, let me read it again, folks.

Q. "Repeated government studies have shown that the only source of new smokers are younger adults. These studies indicate that 95% of all smokers began smoking before they were 25. In addition, nearly 70% of current smokers started smoking before they were 18." Do you see that? Did I read that correctly?

A. Umm-hmm.

Q. So the -- the indications are, a question that you somewhat posed a little while ago whether the

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trend remained or not, that in 1988, 70 percent of smokers began before the age of 18; --

MS. McDOLE: Well objection to the --

Q. -- correct?

MS. McDOLE: Objection to the assumption about 1988.

Q. Correct?

A. Well subject to '88 being a valid number.

Q. Okay. Do you have any -- any reason to doubt that that was the case in 1988?

A. No, I think when you say that new smokers come from -- or new anything, new drivers come much younger. You start young in life so, I mean, I don't think there's anything startling about the fact that people start on activities in their younger years as opposed to their older years.

Q. Okay. Including smoking.

A. Eating, smoking, playing baseball.

Q. And in fact I think the number we looked at --

A. If they do, they do; right?

Q. I think the number we looked at earlier was actually a little bit less than 70 percent, so the number may actually have increased.

A. Or it may have decreased.

Q. Well if this number is accurate, it's up from

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the earlier number we saw.

A. If the earlier number is accurate.

Q. Correct. And he then goes on to say as a result, brands that are well developed among young adult smokers tend to gain more than their fair share of new adult smokers; right? He then goes on to do a --

A. That's what he said, or she.

Q. He then goes on to do a calculation at the bottom of the page using estimates of smoking incidence in the 18 to 20 group from the census data to establish the number of smokers who were exactly age 18. Do you see that?

A. No. Where?

Q. At the very bottom of page 1. He says, "Current estimates of smoking incidence among 18 to 20 were used with census data to count the number of smokers who were exactly age 18." You see that?

A. No. I'm trying to find it. What page?

Q. At the bottom of the page that has number 1 at the bottom of it. I'm sorry, not the very first page, the numbered 1 page.

A. Okay. Now where, at the bottom?

Q. Right.

(Interruption by the reporter.)

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Q. The very last --
A. "Current estimates of smoking incidence among ages 18-20 use the census data to count the number of smokers who were exactly age 18."
Q. So the exercise --
A. Oh, it's an estimate on an estimate, right.
Q. -- that they were doing was to try to determine the number of smokers who were exactly 18 from the census data --
A. Attempted to.
Q. Right.
A. Yeah.
Q. And at the top of the next page he says, "All of these smokers are new adult since they weren't even adult last year." Meaning when they entered they were new adult smokers if you were going to use the term 18 to define that; correct?
MS. McDOLE: Objection to the form. This is not -- The witness says he never saw the document.
A. I never saw it.
Q. Then he says based on this calculation, there are at least 800,000 new adult smokers every year, or 1.7 percent of all smokers. Do you see that?
A. Yes.

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Q. Is that consistent with information that you were made aware of when you were the CEO of the company?

A. No. You just -- You looked at the overall that there was a decline.

Q. There was an overall decline in the number of smokers, --

A. Yeah.

Q. -- but in terms of the number of new smokers --

A. And the number of our smokers are even bigger.

(Interruption by the reporter.)

A. RJR Reynolds smokers was even larger.

Q. The decline among those.

A. Yeah.

Q. Correct.

But in terms of the number of new smokers, that is, entering the age -- smokers at the age of 18, do you have any reason to argue with the figure arrived at here of 800,000 as being an accurate number?

A. I would not assume it's an accurate number if you're asking me personally, because I'd have to see the data and be comfortable with the number.

Q. Well do you have any reason to doubt that people in your marketing department were capable of accurately --

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A. Lots of reason. Good reason.
Q. That the marketing people were not very adept?
A. Accurate, yes.
Q. Not very accurate?
A. Yes.
Q. Mr. Nordine in particular, do you have any knowledge about him?
A. I never met -- No. I never trusted any of them.
Q. How about Miss Burrows? And why is that?
A. Because of experience.
Q. That they weren't very accurate?
A. Marketing people tend not to be too precise.
Q. Do they get disciplined when that happens? Do they get discharged?
A. Depends on the issue.
Q. Were you aware of large-scale discharges that were being conducted while you were the CEO of the company among the marketing people for being inaccurate?
A. My job was to expect and to inspect.
Q. And --
A. I performed both duties.
Q. And with regard to your expectations from the marketing department, were they met or not met?
A. Depends on whom you're talking about.

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Q. Were there, during the period of 1987 to 1988, large-scale discharges among the marketing department for inaccuracies?

A. No.

Q. And if people were routinely producing bogus information, unreliable information, they would have been terminated, wouldn't they?

A. I see no point in the question. My job was to inspect and audit.

Q. At the time that you were the CEO would you have expected that someone who repeatedly performed below expectations by providing imprecise or erroneous information would have had their job terminated? Would that have been your expectation?

A. Not necessarily.

Q. So that you may have kept someone on even though they reported -- they repeatedly failed to live up to expectations of performance?

A. Certainly.

Q. Why would you do that?

A. I'd put them on something they could do.

Q. If someone stayed in their job, is that a reasonable --

A. Well you would put them in something they can handle. You don't put something on somebody that

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they can't handle. You don't have somebody high jump six feet if they can't high jump six feet.

MR. FERGUSON: May I make a suggestion? The two of you seem to be very hard to report and either you should slow down and wait for one another or you need to give the reporter more frequent breaks.

THE REPORTER: Thank you.

THE WITNESS: We'll slow down. We don't want to lose you.

THE REPORTER: Thank you.

BY MR. FINZEN:

Q. In any event, do you have any knowledge of your own that would indicate that the -- the figure of 800,000 new 18-year-old smokers every year was incorrect?

A. I have no knowledge that it was correct or incorrect.

Q. It goes on in the third paragraph to say that the two factors of news and quits have a major impact on the number of Marlboro smokers, referring now to the Philip Morris brand. Since their share of smokers age 18 to 20 is 60 percent, they gain about 480,000 new adult smokers each year. You see that?

A. I see that.

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Q. Do you recall, and I think you made mention a few moments ago, that Philip Morris was steadily increasing their share of market during this time period.

A. That's exactly right.

Q. And does the figure of 60 percent of the share of smokers in that 18 to 20 age group sound accurate to you from what you understood to be their share at the time you were --

A. No.

Q. -- the CEO?

A. No, I just don't know.

Q. The report then goes on to say that the share of market getting 480,000 new smokers gave them a net gain of 1.2 points when the number of quitters they had were added in. Do you see that in the next paragraph?

A. Yes.

Q. Again is that 1.2 incremental share points consistent with what you recall the Philip Morris, and Marlboro in particular, gain being at the time that you were the CEO in 1988?

A. There was a gain.

Q. And the paragraph just before the bullet points in talking about the studies that they've conducted

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it says, "the results indicate that aging was responsible for about 75 percent of all movement in SOM, including all the growth of Marlboro and Newport, and most of the declines of older brands such as Pall Mall, Kent, True, et cetera. Do you see that?

A. Yes.

Q. Now is that consistent with your recollection of the role that aging played upon share of market in 1988?

A. No, I looked at overall share of the market, I didn't get into the segments.

Q. If you look at the very first page under executive summary, number 2, he defines aging as the process where new YAS replaced older smokers who quit. Do you see that?

A. Umm-hmm.

Q. Is that a definition of aging that you were familiar with?

A. Never used it, never heard of it.

Q. You understood the process of switchers; correct? You know what that referred to?

A. You go from one brand to another.

Q. And "quitters," you understand what that refers to?

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A. I can handle that.
Q. People who leave smoking altogether.
A. (Nodding.)
Q. And then "YAS" refers to a term known as young adult smokers; correct?
A. We've learned that today.
Q. We have, and we've seen several documents where that was defined as the 14 to 24 year old age group; correct?
MS. McDOLE: Objection to the form.
A. And 18 to 24. We've seen it defined two ways.
Q. Now the 800,000 new adult smokers every year, the people in the marketing department who -- who wrote this knew that since 70 percent of those started smoking before 18 that meant there were at least 560,000 18 year olds who were smoking before they turned 18; correct?
MS. McDOLE: Objection to all the assumptions here.
A. That was theirs -- That was their calculation.
Q. Do you have any reason to doubt that as being true?
A. I have no reason to doubt it or not doubt it.
Q. And the share of market in that group, I think you also mentioned this, for the RJR products, was

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declining; correct?

MS. McDOLE: Which group? Objection to the form.

A. Overall RJR was declining. I couldn't tell you what the groups were doing.

Q. Okay. And do you have any reason to believe that your -- that that decline didn't include the younger smokers?

A. I had no idea. As I said, it was overall.

Q. And it was clear that RJR wanted a bigger piece of the youth smoking pie, didn't you?

MS. McDOLE: Objection to the form.

A. Of the young adult -- Of all markets. That was our function.

Q. If you look at page 4 of this document, in the third paragraph the report says "RJR's position among YAS is the greatest strategic challenge facing the Company. Our share of smokers 18-20 is only 13% and declining. Because of our older age skew, we lose about 0.6 points per year based on the aging dynamic." You see that?

A. Yes.

Q. Again is that consistent with your understanding of the impact of the aging dynamic in 1988 when you were the CEO?

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A. No, I didn't consider aging dynamics. As I've repeated before, I looked at overall market share.
Q. But did you have an understanding of the impact of the aging dynamic as part of that overall market share?
A. You knew that you were skewed to an older -- older group.
Q. And that the --
A. That's it.
Q. And that the share among the younger group was also declining; correct?
MS. McDOLE: Objection, asked and answered.
A. Sure, among all groups it was declining.
Q. Now with regard to the switching part of the report on page 2 and 3, the report states that switching between brands is another factor explaining the trends in performance; right?
A. I don't know. Where are you looking at?
Q. Bottom of page 2. The second sentence of the paragraph under "B. Switching," the first paragraph says, "However, the cigarette market is extremely brand loyal and it is difficult to convert a loyal smoker of one brand to another brand." You see that?
A. Yes.

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Q. Do you understand that to be --
A. I'm aware of that.
Q. -- a correct statement at that point in time of brand loyalty?
A. (Nodding.)
Q. And he goes on to use a statistic, about 90 percent of all volume is a usual brand purchase. Is that a figure that you were aware of?
A. No. But there's very little switching in the tobacco business.
Q. In fact he goes on on the next page to say, over a full year, the number of switchers is probably about 3 to 4 percent. Is that a figure that's consistent with what you understood the number of switchers to be?
A. I don't know.
Q. And that there were approximately 40 different brands competing for that 3 to 4 percent. Is that correct?
A. Do you want an answer? No, I don't know.
Q. Were there, during 1988, about 40 different brands?
A. I have no idea.
Q. Do you have any reason to doubt the accuracy of -- of the 3 to 4 percent of switchers?

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A. I have no reason to attest to the validity.
Q. He says the switching provides a limited opportunity for building business because there are relatively few, three or four percent, smokers who convert from one brand to another. Is that an accurate statement of your understanding of the ability to garner business from switchers in 1988 as a limited opportunity?
A. Yes.
Q. He then says, in the second-to-the-last paragraph under B, "The same ideas apply to every time period in the history of the business." You see that?
A. Where are we here?
Q. The second-to-the-last paragraph on -- under B on page 3.
A. "The same ideas apply to every time period in the history of the business."
Q. Again, was it your understanding that the figures that were reported here, in terms of the impact of aging and switching, were consistent throughout the history of the tobacco business?
A. No. Marlboro's growth has always been due to aging, it wasn't due -- You're talking about history of the tobacco business? You're going back 200

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years.
Q. I'm talking about the history of the RJR business.
A. Well let's go back a hundred then.
Q. Do you have any reason to doubt the accuracy of that --
A. Yes.
Q. -- statement?
A. Yeah. I don't know how they can make it unless you see the figures, to every time period in the history of business.
Q. Isn't it reasonable to assume --
A. Marlboro's growth has always been due to aging. Well first of all they said Marlboro's growth was due to their ability to bring on new smokers.
Q. But he defines aging as that very process.
A. No, he doesn't.
Q. Yes. Look at page 1. Executive summary. The definition of aging, number 2.
A. That isn't -- What's that got to do with new people coming on? It doesn't say it.
Q. The bullet point says, "Aging is the process where new YAS replace older smokers who quit." That's the definition.
A. It's a very weird way of looking at a business I

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would say. Marlboro's success is due to a variety of things that they've been able to do, which is far more than the fact that people get older through the process. You got to maintain those people through that period.

Q. And that's where the brand loyalty comes in; correct?

A. No, brand satisfaction, product satisfaction, product innovation. If that was the case, you go back to Winston when Winston was big in the '60s and then lost share steadily through -- which comes through a whole variety of things.

Q. Primarily, though, through the aging and death --

A. No.

Q. -- and quitting --

A. No, because you're not bringing a product out that satisfied the need of the consumer and your competitor was.

Q. Your marketing department, however, believed it was due to the aging phenomenon; correct?

A. Well they could say it was aging but the reason for the aging, there's a lot of big reasons underneath just the fact that somebody's aging. I mean, this is nonsense.

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Q. Do you have any --

Do you have any reason or knowledge specific to doubt the accuracy of this report?

MS. McDOLE: Objection. I think he's shown you that.

A. I told you I haven't had a chance to study it, I haven't had a chance to talk to the authors and looking at the databases and seeing what else they take in, but to say that the whole change in market share is due to -- is due to this concept is -- is nonsense. That's my opinion.

Q. And I'm asking you for this -- the basis as CEO in 1988 --

A. Because they're not talking about the product satisfaction.

Q. You've got to wait for me to finish my question.

A. All right.

Q. I'm asking for specific information you have as CEO in 1988 that would say that this report is -- is not accurate.

A. I'm not saying it's not accurate. I'm saying it's incomplete.

Q. Do you have any knowledge, specific knowledge that would question the accuracy of what is in the

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report?

MS. McDOLE: Objection, asked and answered.

A. I have no idea in terms of the accuracy at all. I said the report is incomplete as an analysis of what's happened in the history of tobacco, which is what we get down to here.

MR. FINZEN: Let's take a break.

THE REPORTER: Off the record, please.

(Recess taken from 2:00 to 2:12 p.m.)

MR. LAYDEN: It's my understanding that counsel for the state of Minnesota and counsel for the state of Washington have at least some Philip Morris documents that they've indicated they want to show this witness. As stated previously on the record, this witness has not signed the confidentiality order either in Minnesota or the state of Washington. Since this witness is a former CEO and president of a competitor of Philip Morris, I believe it's highly inappropriate to show this witness documents that have been designated confidential by Philip Morris and I believe it would also be a violation of both orders to show this witness documents that have in fact been designated confidential by Philip Morris, so we would object to

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showing this witness any such documents.

MR. FINZEN: My response is that, as I stated earlier, this is an issue that RJR has known about for a considerable period of time, they have met with Mr. Johnson, they are paying for his lawyer to defend him in this matter, they have known of his unwillingness to sign the order for -- for some time and there have been accommodations that have been made with some other orders in the past. I don't know what efforts were made to get those kinds of accommodations done, but if we get to a document that is a Lorillard or Philip Morris document and we can't get the judge on the phone to get relief and we can't complete the deposition as a result of that then I'm going to ask that the deposition be rescheduled after we can get relief from the court and that that be done in a place convenient for the state of Minnesota and at the expense of R.J. Reynolds.

MS. McDOLE: Just so the record is clear, the state of Minnesota has known about this issue relating to the protective order or confidentiality agreement at least as long as we have, if not longer.

MR. FINZEN: But it's not our order, it's your order and --

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MS. McDOLE: I think it's the court's order.

MR. FINZEN: Well it's the court's order that you sought, and we've been willing to make accommodations in the past. No one from RJR -- Someone from Mr. Branch's office did call me and I said that there -- we'd be willing to make accommodations. No one from RJR contacted me, not one person, about this issue.

MS. McDOLE: I think there is correspondence and there have been communications between Mr. O'Fallon and local counsel there, Jonathan Redgrave.

MR. FINZEN: Not about this issue.

MS. McDOLE: I think you're mistaken.

MR. FINZEN: Other than saying that the order wasn't going to be signed, we said, well, work out some accommodation, you all know what accommodation we're willing to make.

MS. McDOLE: And I think we have accommodated you.

MR. FINZEN: There was, to my knowledge, no effort to reach that accommodation in this situation.

MS. McDOLE: Well --

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MR. FINZEN: So we'll see what happens with the documents, but your position is noted for the record and we'll see if we get to any --

MS. McDOLE: Well if the documents you're going to show this witness are as irrelevant as most of the documents you've shown him so far, I don't know what we're wasting time about.

MR. FINZEN: Well that's your opinion. You're certainly entitled to it.

MS. KELLY: Mr. Finzen, I would also like the opportunity to view the documents that you said you might have for my client, Lorillard, before you show them to the witness and at that time I will determine the objections for the record.

MR. FINZEN: All right.

BY MR. FINZEN:

Q. Mr. Johnson, in 1988 when you were the CEO of RJR Nabisco, it continued to be a marketing strategy of the business to market the tobacco products of R.J. Reynolds to younger smokers; correct?

MS. McDOLE: Objection to the form.

A. To young adult smokers, --

Q. And as we've seen --

A. -- 18 to 24.

Q. As we've seen, the strategy of young adult

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reached, historically in RJR, to ages under 18. Isn't that correct?

MS. McDOLE: Objection to the form, mischaracterization.

A. I don't know what you mean.

Q. The 1975 marketing plan.

A. Well the 1975 marketing plan, that's what it said, that's what it said.

Q. And that continued to be part of the marketing strategy in 1988, did it not?

A. No.

MS. McDOLE: Objection to the form.

Q. In marketing to the 18 year olds based upon Plaintiffs' Exhibit 1605 that we've seen, you knew that 70 percent of those 18 year olds had started smoking before they were 18; correct?

A. Not me personally.

Q. Well that's what your marketing statistics showed; correct?

A. I don't care what it said. Your question is that I knew. I didn't know that.

Q. And you --

Well RJR and the marketing department knew that; correct?

A. Somebody knew it, but I didn't know it.

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Q. No one made you privy to that.
A. No.
Q. And because the number of gains from switchers was only 3 to 4 percent, that wasn't an area where you were going to focus significant marketing activity; correct?
MS. McDOLE: Objection to the form.
A. That's what they said.
Q. Is that accurate?
A. I have no idea because I don't know what the program -- the details of the program.
Q. In 1987 and 1988 when you were the CEO of the company, RJR had a huge advertising budget, did it not?
A. What do you mean by "huge"?
Q. Hundreds of millions of dollars.
A. In media?
Q. Advertising, marketing and promotion.
A. I'd have to see the numbers.
MR. FINZEN: Mark this if you would, as Plaintiffs' Exhibit 602A. It was previously marked as 602 and it's had an amendment to it.
(Discussion off the stenographic record.)
(Plaintiffs' Exhibit 602A marked for identification.)

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BY MR. FINZEN:

Q. Mr. Johnson, I'm showing you now what has been marked as Plaintiffs' Exhibit 602A, and this is the State of Minnesota Blue Cross Blue Shield Expert Analysis of Advertising, R&D and Youth Prevention Expense done by Mr. Paul Much. It bears the date of July 1997, but on the second page you will see it has the signature of Mr. Much on September 2 which represents an amendment that was made to the original July document.

Specifically the information relating to RJR that I would ask you to look at can be found on the -- under the tab A at the very beginning, the first A tab.

A. Umm-hmm.

Q. It shows Philip Morris on top and R.J. Reynolds on the bottom.

A. It says Liggett, Lorillard; Liggett, Lorillard.

Q. Well these pages in particular are where the R.J. Reynolds information is contained.

A. Section A?

MR. BRANCH: I think it's -- he's talking about --

Q. Section A, the very beginning.

(Discussion off the stenographic record.)

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MR. LAYDEN: Counsel, we've reached the point now I believe that this expert report, if you look at the information you're referring to, it contains Philip Morris information. I believe that that information was probably taken from documents from --

MR. FINZEN: From interrogatory answers and FTC data is what it is.

MR. LAYDEN: Well I guess my concern is, and I don't know, that information may have been taken out of information that we designated as confidential pursuant to the Minnesota protective order. If that's the case, you're showing this witness information which you shouldn't be.

MR. FINZEN: Well do you know that the interrogatories from which this information were taken were -- was confidential?

MR. LAYDEN: I don't know the source of the information, counsel.

MR. FINZEN: Well let's -- Why don't you give me that back, then, and let's see if we can find the answer to that off the record.

MS. McDOLE: Why don't you just show him the information about RJR?

MR. FINZEN: It's on the same page.

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MS. McDOLE: You can mask it.

THE WITNESS: I don't need a precise number. I'm just trying to find out what you mean by "huge."

MR. BRANCH: You don't need to show it to him because you're going to read it to him anyway.

MR. FINZEN: Let's go off the record.

THE REPORTER: Off the record, please.

(Discussion off the stenographic record.)

(Recess taken from 2:30 to 2:54 p.m.)

(Plaintiffs' Exhibit 602B marked for identification.)

MR. FINZEN: For the record, we've marked temporarily a portion of Exhibit 602A as 602B to be shown to Mr. Johnson. It contains just those pages that relate to RJR in the area of advertising, R&D -- I'm sorry, in the area of advertising and youth prevention. A copy will be made of this and it will be the officially marked exhibit. Any parts of this that refer to any other defendant have been redacted. The only other defendant who appears on this is Philip Morris. Philip Morris counsel has had a chance to view the redacted version and is in agreement that this -- a copy of this can be used as Exhibit 602B and shown to the witness with his

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transcript. However, 602A, the complete exhibit, will not be distributed to the witness with the transcript and will be sealed, and that part of the record will be sealed.

MR. LAYDEN: That's fine. Going forward, as I requested earlier, if we could have you show to me prior to showing to the witness any Philip Morris document or document that contains Philip Morris information, I'd appreciate it. I want the record to be clear that this witness was shown the document that contained the Philip Morris information prior to counsel for Philip Morris being given an opportunity to object to the witness being shown the document. I'm not suggesting that Mr. Finzen did that intentionally, I just want the record to be clear that that did in fact occur.

MR. FINZEN: The record should also reflect that Mr. Johnson did not see any of the information relating to Philip Morris.

THE WITNESS: Did not open the document.

MR. FINZEN: Did not get beyond the cover page of the document.

And with regard to showing additional documents, I'm happy to do that, again with the caveat that if -- if a decision is made to not allow a document to

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be used, or an objection is made, then we're either going to have to try to find the judge to resolve the matter or we reserve the right to have the deposition rescheduled at the expense of RJR in the future.

BY MR. FINZEN:

Q. Mr. Johnson, I'm now going to hand you pages that have been marked as Plaintiffs' Exhibit 602B --

A. How wonderful.

Q. -- that have information related only to RJR, everything else redacted.

A. You know, the stuff that's like this (indicating), I can't look under that.

Q. Correct. Just looking at the --

A. The first line here is "Research & Development Expenditures"; right?

Q. Right. And then below that advertising, marketing and --

A. And promotion.

Q. -- youth prevention on the last line. You see that?

A. Umm-hmm.

MS. McDOLE: I want to state my objection to showing the witness this information which has been put together in your retained expert's report as opposed to the information that comes directly from

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RJR files.

MR. FINZEN: Okay.

Q. Now the first page you have should have at the top, in the columns across, 1954 at the left-hand side.

A. I don't have that. I have to write that in.

Q. No, at the very top above the redacted --

A. Oh, way up here. Ahh, well done.

Q. Yeah, at the very top. You see that?

A. Yeah. All the way to '64. Right.

Q. If you turn to the third, I'm sorry, the fourth page of that document --

A. R.J. Reynolds. This is one, this would be two, this would be three. Research and development?

Q. Right.

A. But it starts at 1987.

Q. 1987 should be the far left-hand year.

A. Yeah.

Q. 1988 next to it.

A. Can I turn this over? There.

Q. Okay.

A. Okay.

Q. Now looking under the advertising, marketing and promotion --

A. Expenditures.

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Q. -- under R.J. Reynolds.
A. Yeah.
Q. You'll see that there are two lines there. The first one, "Advertising, Marketing & Promotion...as Stated in Answer to Interrogatory Number 21..." Do you find that line?
A. Umm-hmm.
Q. And then one below that that refers to "...Reported to FTC."
A. Yes.
Q. For 1987 the figure for as reported in the interrogatory is 469,964,000; is that correct?
A. Yes.
Q. Is that what yours shows?
A. That's what it shows.
Q. And below that nine -- the figure to the FTC 982,584,217.
A. Umm-hmm.
Q. Those two figures, do you understand why there would be a difference --
A. None. I have no idea.
Q. Do you understand the reference to reporting to FTC as a requirement at that time?
A. No.
Q. Do you know whether or not there was reporting

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of advertising, marketing and promotion expenditures to the FTC in 1987 and '88 while you were CEO?

A. I have no idea.

Q. In whose area or department would that have been?

A. That would be in the regulatory area and all the jillions of forms you -- and they're probably looking at two different things, of course, here.

Q. Do you know what would account for the difference in what they would be looking at?

A. Pretty big difference.

Q. But you don't know what would account for it?

A. I've got a feeling -- Christ, I can't believe that. Unless it's co-op I have no -- That's a huge difference. I mean, anybody can work off a 10 K, you can pick it off a 10 K figure.

Q. If you look at 1988, the two --

A. There's another huge difference.

Q. The two numbers are under -- for the interrogatory number 21(g) answer 436,853,000 and for the FTC reported number 1,151,648,213. Again, do you have any idea what accounts for the difference?

A. I have no idea.

Q. But it is a huge difference, you would agree?

A. Oh, God yes.

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Q. Now as to either of those numbers, do you have any recollection of which you believe to be the more accurate as you recall expenditures on the --

A. The larger number.

Q. The larger number?

A. (Nodding.)

Q. In both cases?

A. Yes.

Q. Now as -- As the o -- The purpose or basis for the expenditure of those funds, it's true, is it not, that a large portion of those funds were spent in an effort to get new smokers to smoke RJR brands?

MS. McDOLE: Objection to the form of the question.

A. I have no idea.

Q. Do you know how the --

A. Are we talking about the United States?

Q. Yes.

A. Or are these worldwide figures?

Q. Those are the United States.

A. Are you sure?

Q. I'm pretty sure.

MS. McDOLE: Well objection to the form of that.

A. When you're looking at total -- total

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expenditures, I just don't know. I mean, you never looked at U.S. figures by themselves in terms of totals I think you get worldwide. So that's a -- It may be that. I just don't know what it accounts for.

MS. McDOLE: Objection, we also don't know what interrogatory-number-whatever-it-was asked.

THE WITNESS: Yeah.

MR. FINZEN: I'm going to move to strike the answer as nonresponsive. Let me ask the question again.

Q. One of the purposes or the basis for the expenditure of these advertising funds shown here was in an effort to get new smokers to smoke RJR brands; is that correct?

A. That probably is, but I couldn't tell you how much.

Q. And it's safe to say that by far the largest part of it would have been for obtaining new smokers as opposed to switchers; isn't that correct?

MS. McDOLE: Objection to the form.

A. That's not -- I don't know.

Q. As a shrewd executive over many years, would you authorize the expenditure of substantial sums of money to go after 3 percent of the market or 75

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percent of the market?

MS. McDOLE: Objection to the form.

A. Depends where I had the best -- the most upside.

Q. The answer to that question wouldn't be in the area of 75 percent of the market?

A. Not necessarily. You might upset your pricing structure.

Q. The fact of the matter is, however, that in terms of marketing, advertising and promotion for -- for tobacco at that time, a relatively modest part was devoted to switchers; isn't that correct?

MS. McDOLE: Objection to the form.

A. I can't tell you. You can get all those numbers from Reynolds that will show you where the brands and -- you know, where all the various funds are spent, and in this year, in these two years we had a substantial amount of money behind -- probably the biggest amount of money was behind Premier.

Q. For advertising --

A. Yeah.

Q. -- in 1987?

A. Yeah.

Q. When was Premier --

A. Well advertising, promotion, getting all the market research and everything else. That would be

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all in those numbers there.

Q. The Premier advertising --

A. But certainly '88.

Q. How much --

A. So if you're looking at that and defining that as new smokers, there are new clients.

Q. How much of that would have been in the -- either one of these figures, do you have any idea?

A. No.

MS. McDOLE: For what? Objection to form.

Q. Premier.

A. Premier, no. You had to figure out what you had in capital, what you had. I can't go back 11 years, but it's all there.

Q. If you turn back one page and look at 1986, --

A. Yeah.

Q. -- the figures for 1986 were for interrogatory number 21, 600,440,000, and for the FTC report a billion, fourteen million, seven hundred twenty thousand, one forty-six; correct?

A. Right.

Q. So that the -- the numbers actually went down slightly in 1987 from what they were in 1986; correct?

MS. McDOLE: Objection to the form. How

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can you say that?

A. Well they went from six to four sixty-nine, and they went from one oh one four to nine eighty-two.

Q. Which would be down; right?

A. Yeah, yeah. That's BGO.

Q. And there would not be, in 1987, then, significant Premier money?

A. Oh I think there could be, yeah.

Q. What would account for the deduction or the lowering of the amount if there was significant Premier money?

A. I would ask Mr. Much, you know, who put these together. They must have noticed that there was a difference. I mean --

Q. I understand there's a --

A. The architect should be able to explain it.

Q. The architect was working, as the document states, from those two sources.

I'm asking you as an executive with the company at that time, do you have any idea why --

A. None.

Q. -- the advertising and marketing promotion went down between 1986 and 1987?

A. None, but he must have. He must know what the criteria was and what you submit to FTC as to what

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you submit on so-called interrogatories or, I mean, he's even less competent than he appears.

MR. FINZEN: Move to strike as nonresponsive.

Q. I'm asking you as CEO of the company if you have any knowledge.

A. No.

Q. Now below that, in the line below that it refers to youth prevention expenditures, do you see that?

A. Uh-huh.

Q. In -- Did RJR have a youth prevention program in place?

A. Not to my knowledge.

Q. In either 1987 or 1988?

A. Not to my knowledge.

Q. Do you know whether RJR was committed, while you were CEO of the company, to making efforts to prevent youth -- youthful smokers from beginning to smoke?

A. I have no idea what it is. I have no idea what it covers.

Q. And --

A. Never seen it before.

Q. The figures listed for youth prevention expenditures for 1987 were 167,029 -- I'm sorry, for 1987. Is that correct? Is that what it shows?

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A. That's what it shows.
Q. And 139,246 for 1988.
A. One sixty-seven, one thirty-nine.
Q. Do you have any idea what those funds were expended on?
A. Not a clue.
Q. Who was in charge of the youth prevention program?
A. I never heard of it.
Q. You weren't even aware that one existed?
A. No.
Q. Were you aware of conversations inside the company about the importance of trying to keep youth from starting smoking?
A. Not to my knowledge.
Q. Were you aware that RJR was making any public statements about its efforts to keep youth from beginning smoking during the time that you were CEO of the company?
A. Not that I can recall.
Q. Is that something that as the CEO of the company that you feel you would have been aware of if it was ongoing?
A. Not necessarily.
Q. Is it something, as CEO of the company, that you

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felt should be done by the company?

A. I have no opinion.

Q. Well do you feel as the CEO of a company that had been implicated with a product that many people said were -- was responsible for the deaths of tens of thousands of people a year, did you feel any obligation to -- to take efforts to stop children or youth from smoking?

A. I had no idea how to go about it.

Q. That was not a topic of discussion within the company at the time you were CEO?

A. No. It might have been a topic of discussion, but not with me.

Q. Who would have --

If you were not aware of it, who would have been aware of it inside RJR Nabisco?

A. You just have to --

MS. McDOLE: Objection to the speculation.

A. Yeah, I have no idea.

Q. If you look at the last page of the chart or the -- before we get to the --

A. How do I --

Q. -- graphs. Just turn till you get -- before you get to the pie charts, the last page of the pages like that.

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A. Like here (indicating)?

MS. McDOLE: Can you tell me where that is in this exhibit?

A. Does it go up to this tab?

Q. It should be -- It's a page that looks like this (indicating).

MS. McDOLE: Thanks.

A. Which one? It's all R.J. Reynolds?

Q. Yeah, right. Yes.

A. All right.

Q. Actually the -- I'm sorry, I want the page before that. The page one page before that, if you would.

A. Okay. 1954 again?

Q. Yeah, at the far right-hand side it should say 1954 to 1994.

A. Yeah. The far right-hand side.

Q. Right.

A. Right.

Q. Again looking at the lines we were looking at before about advertising, marketing and promotion --

A. Umm-hmm.

Q. -- for both interrogatory 21 and the FTC report, --

A. Umm-hmm.

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Q. -- do you see the two figures there? Under the total for interrogatory 21 a figure of nine billion seven thirty-three million, --

A. Yeah.

Q. -- two hundred ninety-six --

A. Right.

Q. -- thousand, seven twenty-eight. You see that?

A. Yeah.

Q. And then the FTC number, again huge difference, 19,121,484,476.

A. Right.

Q. Do you --

Again, do you have any knowledge as to why there would be that disparity?

A. No. I haven't had a blinding flash since you last asked me.

Q. Turn if you would, then, please, to the charts. Let me walk around, it'll be easier. It's the last page of the 602B that you have which is the pie chart.

A. Yep.

Q. "Youth Prevention Expenditures" --

A. Yeah.

Q. -- "to Advertising, Marketing & Promotion." Do you have that page?

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A. Yeah, I've got it.
Q. This is a graphic depiction of the numbers we just looked at before. As a former CEO of this company, does it disturb you in any way that the relative spending on youth prevention was so small in comparison to the advertising, marketing and promotion expenditures of the company?
A. I don't -- You know, I have no idea what the expenditures are and what you're talking about.
Q. So the -- the relative disparity between the two does not disturb you?
A. No. Did you do one on charitable contributions?

(Plaintiffs' Exhibit 1606 marked for identification.)

BY MR. FINZEN:
Q. Mr. Johnson, I'm --
A. You didn't do one on charitable contributions in here.

MR. FINZEN: Move to strike. There's no question pending.

THE WITNESS: Pardon?

MR. FINZEN: I say there's no question pending. I'm about to ask you one. I move to strike your comment.

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Q. I'm showing you now what's been marked as Plaintiffs' Exhibit 1606, --

A. Strike yours.

Q. -- and what this is is a compilation of the figures for 1987 and 1988 that we were looking at previously. You want to -- If you'd like to compare it against the exhibit, you're welcome to do that.

A. I'll accept the fact the figures are the same.

Q. With that --

With that understanding if you will, for those two years, the totals for either interrogatory number 21 or the FTC report of expenditures for marketing, promotion and expenditure are on the right-hand side of the document. Do you see those?

A. Umm-hmm.

MS. McDOLE: Objection for lack of foundation concerning those numbers.

Q. And the total for the youth prevention expenditures for those same two years is also at the top on the right-hand side of the page. Do you see that?

A. (Nodding.)

Q. And below that there's a calculation that shows the total youth expenditure for those two years divided by the advertising, marketing and promotion

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for both interrogatory number 21 answer and the FTC. Do you see that?

A. Hmm. Yes.

Q. And if you look at the result of that calculation and put it into a meaningful number, you multiply that fraction by 10,000, it shows that for every $10,000 spent on marketing, promotion and advertising, RJR in 1987 and '88 spent between a dollar and forty-three cents and three dollars and thirty-seven cents on youth prevention. Do you --

MS. McDOLE: Objection to that statement.

Q. Do you see that?

A. Yeah, I see that.

Q. My question to you based on those numbers is do you believe that the expenditure of between a dollar forty-three and three thirty-seven for every $10,000 of advertising shows any conviction on the part of RJR in 1987 and 1988 to keep youth from starting smoking?

MS. McDOLE: Objection to the form.

A. I'm not going to answer that.

Q. You can't or you're not going to?

A. I can't answer it. It's impossible to answer it. I don't know what the numbers, I don't know where the numbers came from.

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Q. Well I just showed you --
A. I don't know if they're right. Well I know where they came from but there are no audited numbers, no gap, so I can't tell you whether that's a good idea or not a good idea.
MR. FERGUSON: Bruce, I'm looking at the realtime transcript and I think this would be a good time for a break to give the court reporter a few minutes.
MR. FINZEN: Sure.
(Discussion off the stenographic record.)
(Recess taken from 3:18 to 3:30 p.m.)
BY MR. FINZEN:
Q. Mr. Johnson, what was Team Nabisco?
A. Team Nabisco was a group of athletes that we used for promotional purposes.
Q. And was there any difference between Team Nabisco and sort of sports marketing generally within the company?
A. Oh, yes.
Q. What was the difference between the two?
A. Well each of the individual companies had their own, you know, marketing program. Some had more sports marketing, like tobacco had big sports marketing, particularly with NASCAR, Formula 1,

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Vantage Golf, whereas team -- so the Team Nabisco people pretty well without exception were corporately directed so you would use them -- you might use them at the Daytona, you may use them at Dinah Shore, you might use them on -- in Europe or Japan or wherever.

Q. And when you say "corporately directed," --

A. Yeah.

Q. -- what do you mean?

A. In other words, with the corporate -- we underwrote them as a corporate asset and then the various companies in countries or divisions would then request them for particular events that they were doing. Maybe it's a Pro/Am, maybe it's a golf outing, maybe it's a tennis at the U.S. Open.

Q. And this was a -- purely a marketing effort aimed at improving sales of all RJR products?

A. Yes, yeah. It -- Yeah, it was a corporate asset. It wasn't confined just to a division, whereas the Winston Cup, for instance, would be something that was unique and administered and run by the tobacco company.

Q. Who -- Who were the sports celebrities that were on Team Nabisco?

A. I don't know if I can remember all of them. Do you just want some names?

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Q. As many as you can remember.
A. Well we had Frank Gifford, Don Meredith, O.J. Simpson, let's say Rod Laver. These are people that basically were at tennis events, B. J. Armitrage, Jay Hebert, Lionel Hebert. In golf, Nickolas, Crenshaw, Ray Floyd, Fuzzy Zoeller, Tony Penna, P-E-N-N-A, Judy Dickinson, Pat Bradley. That's a pretty good span. And then we had a lot of, like on the LPGA we had a lot of girls that we put on the bags, you know, kids that would be coming up or kids that would be making it not as high in celebrity.
Q. And in terms of the -- the group that you just mentioned, would all of those have been involved in any one year, or were some on a year, off a year; how did that work?
A. No, they'd be pretty well run right through the year. Some would have heavier schedules than others, Bobby Orr.
Q. And do you know what the budget was in terms of -- of what they were paid for Team Nabisco for a year?
A. With all their expenses and everything else, five, six million probably.
Q. That would --
A. Don't hold me to the number, but that would be

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in the ballpark I would think.

Q. And that would include their compensation as well as travel expenses and --

A. Everything, yeah, the whole package. Maybe a little more than that, might be closer to 10 because you had a couple of very high priced ones.

Q. It's been reported that Nickolas, for example, got a million dollars a year?

A. Yeah, he'd be that. That's about -- That was his rate.

Q. Were there any others that were close to that number?

A. No, no. Jack was -- Big Jack was a key thing and we had such a big commitment to golf that if you got that you got to have Jack.

Q. You're talking about Jack Nickolas.

A. Yeah.

Q. Okay. While you were with the company was there ever a team like Team Nabisco of sports-related athletes and stars that were under contract that were involved in any way with dealing directly with youth on behalf of the company?

A. No, I'm sure that we did youth events and that and they were -- they would be utilized at those.

Q. Is there at any time while you were with the

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company any equivalent to Team Nabisco that was involved in any way with the activities of youth-smoking prevention?

A. Not to my knowledge.

Q. Is that an idea that was ever considered by the company --

A. No.

Q. -- while you were there?

A. No, the athletes were basically out there to move merchandise.

Q. What do you mean by that?

A. Well in other words, they'd be at efforts with customers where you -- you know, you're one-on-one and you're moving -- you're moving product or -- and -- or use them in the -- in our various advertising campaigns, various conventions that would be held.

Q. If you --

Do you still have Exhibit 602B there?

A. Yeah.

Q. Again turning to that last page that had the totals from 1954 to 1994.

A. The 19 million and the nine million seven?

Q. Right.

A. Yeah.

Q. Do you have that page?

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A. Yeah.
Q. Under the heading 1954 to 1994 the youth prevention for the decade of 19 -- I'm sorry, looking over to the left for the decade of 1980 through '89, the total there was a million eight ninety-six. Do you see that?
A. No.
Q. On the bottom of the page.
A. 1954 to 1994?
Q. No, I'm looking just to the left of that, two columns over, 1980 to 1989.
A. 1980 to '89, okay. One million eight ninety-six.
Q. Right.
A. Yeah.
MS. McDOLE: I'm sorry, where is that in the big exhibit?
MR. FINZEN: It's the last page before -- These pages aren't numbered, it's under the A tab. Yeah, the page before that.
MS. McDOLE: Oh, okay.
MR. FINZEN: No, before that. There you go. That's the page.
Q. So for the decade 1980 to 1989, youth prevention a million eight ninety-six, one ninety-four. Again,

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in terms of approving the budget for youth expenditures or youth prevention, would that have come as part of the budget that would have come to you as CEO?

A. No.

Q. At what level would that have been approved?

A. I have no idea because I just don't know what was involved. Depends on the amount.

Q. In terms of the expenditure during the -- the decade of the 1980s when you were there for youth prevention of a million eight hundred ninety-six thousand, one ninety-four dollars, in comparison to, for example, the annual budget for Team Nabisco, do you think that -- that the expenditure of that fund shows a lack of commitment on the part of the company to a meaningful effort to keep youth from starting to smoke?

A. No.

MS. McDOLE: Objection.

A. No.

Q. In terms of other expenditures within the company, much has been -- has been written about something called the RJR Air Force. Are you familiar with that term?

A. Yeah. It's the jets.

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Q. The jets, the corporate jets?
A. They certainly weren't the personal jets.
Q. That's what I say, they were the corporate jets?
A. Yes.
Q. It's been reported that during the period of time when you were CEO there were ten total corporate jets for the company. Is that correct?
A. Yeah, be in that neighborhood.
Q. And that during that same period of time there was a hangar that was erected in -- here in Atlanta for the -- for the corporate jets and -- pilots?
A. Yeah. Not all of them.
Q. Not all of the jets?
A. No.
Q. That -- That project was approved by you; correct?
A. That's right.
Q. Do you know what the total cost of that project was?
A. The building?
Q. The building, everything --
A. About four million dollars.
Q. Everything that went into it.
A. About four million dollars.
Q. There was a Wall Street Journal article that

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reported a figure that was significantly higher than that. Are you familiar with that article?

A. No.

Q. Pardon?

A. No. What was the figure?

Q. I'm going to tell you as soon as I find it. The Wall Street Journal reported a figure of 12 million dollars for the hangar at 13,000 square feet before you authorized it to be increased to 20,000 square feet. Are those figures accurate?

A. No.

Q. And so the -- the total as built for that hangar you believe was four million?

A. Yeah. You'll have to check. And then -- then we built extra office space in there to handle non-flight operations.

Q. This same story described -- said that it had been called the Taj Mahal of hangars. Have you heard anyone refer to it as that?

A. Oh, yes. Yeah. It was a hangar.

Q. It had floors of Italian marble; --

A. Yeah.

Q. -- is that accurate?

A. No.

Q. Floors and walls with inlaid mahogany; is that

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accurate?

A. No.

Q. None of that was in the final --

A. It had expensive antiques, they were all knockoffs.

Q. And in terms of these -- these particular reported items about the floors being marble, none of that was true?

A. No, travertine.

Q. Pardon?

A. Travertine, which is not quite marble.

Q. And -- And no antique Chinese ceremonial robes?

A. Knockoffs.

Q. Not real Chinese antique art.

A. No.

MR. FINZEN: This is probably a good breaking point.

THE REPORTER: Off the record, please.

(Deposition adjourned at approximately 3:44 p.m.)

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C E R T I F I C A T E

I, Debby J. Campeau, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of F. ROSS JOHNSON at the time and place aforesaid; and that the foregoing transcript, Volume I, consisting of pages 1 - 202, is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at Atlanta, Georgia, this 11th day of September, 1997.

DEBBY J. CAMPEAU, RPR

Notary Public

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S I G N A T U R E P A G E

I, F. ROSS JOHNSON, the deponent, hereby certify that I have read the foregoing transcript, Volume I, consisting of pages 1 - 202, and that said transcript is a true and correct, full and complete transcription of my deposition, except per the attached corrections, if any.

(Please check one.)

____ Yes, changes were made per the attached

____ (#) Signature Page Addendums.

____ I have made no changes.

F. ROSS JOHNSON
Deponent

Sworn and subscribed to before me this day of , 199__.

Notary Public

My commission expires: (DJC)

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